STATE OF CALIFORNIA PETE WILSON, *Governor*

DELTA PROTECTION COMMISSION
14215 RIVER ROAD
P.O. BOX 530
WALNUT GROVE, CA 95690
PHONE: (916) 776-2290
FAX: (916) 776-2293

April 12, 1996

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Written Comments on Proposed Amendment to the Land Use and Resource Management Plan for the Primary Zone of the Delta and Adoption of Regulation Governing Siting of New Sewage Treatment Facilities and Areas for Disposal of Sewage Effluent and Sewage Sludge in the Primary Zone of the Delta

SUPPORT - INDIVIDUALS

1502 Pebble Drive
Greensboro, NC 27410
April 4, 1996

Delta Protection Commission
Attn: Patrick McCarty, Chairman
14215 River Road
Walnut Grove, CA

Re: Hearings on Disposal of Sewage Effluant and Sewage Sludge in the Primary Zone of the Sacramento-San Joaquin Delta

Gentlemen of the Commision:

I wish to go on record as opposing the application of sewage effluent and sewage sludge on Primary Zoned land. As a landowner on Finck Road, Tracy, and fifth generation Californian, I must protest this short-sighted expedient sought by residential land developers.

The San Joaquin Delta is the largest and most unique estuary on the Western Hemisphere's Pacific rim. The land and water will become more valuable over time for high yield agricultural and recreational use--both of which will enhance the Primary Zone's tax base. This land also supports a number of related jobs.

Land developers should be required to treat sewage water so that it can be used on parks, residential lawns, school grounds, golf courses, etc., within the developments where it is generated. Alternatively, this water should be fully treated and returned to the river. One of these two alternatives would be the appropriate minimum 1990's expectation from both an ecological and economic standpoint.

Land application of sewage effluent might be appropriate for dry or marginal land, outside the Primary Zone, which could subsequently be used as irrigated pasture. Odor is definitely a problem when effluent is sprayed.

Additional points of information:

* Land treated with sewage water will be permanently contaminated with heavy metals. Food crops, for direct consumption, can never be grown on it again.

* Full treatment of residential sewage yields sludge which many cities and metropolitan areas further treat and sell as a fertilizer product--offsetting a portion of the cost of treatment. Sludges can alternatively be disposed of in a landfill which could be sited in the dry or marginal land of the foothills--rather than in the more valuable Primary Zone.

(1)

* To insure that adjacent properties and the Delta's ground water are not contaminated when sewage effluent/sludge is sprayed/spread, properly engineered ground water cut off systems need to be in place. This warranty will be almost impossible to obtain given the unique and complex hydrogeology of the Delta land.

I live in the Southeast presently and, to my knowledge, no large scale development would be allowed to dispose of municipal wastes on such land. California is generally viewed as progressive and as a leader in ecological solutions, so it seems inconsistent to permit the placement of sewage effluent or sludge on primary zoned land.

In closing I would ask you to consider the responsibility you have to preserve our lands and waters for future Sacramento-San Joaquin generations. Short term lower costs for housing development are not in the long term interest of California and its citizens. Delta lands are a treasure to be protected.

Sincerely,

Fred H. Andresen

APR - 8 REC'D

April 5, 1996

Margit Grosboun
Delta Protection Commission
P.O. Box 530
Walnut Grove, CA 95690

I am a land owner of farmland in the Delta.

Subject: Disposal of Sewage Sludge and effluent on Delta Farm Land.

I am against the proposal of using sewage effluent and sludge on farmland because:

1. Using sewage effluent and sludge would restricts the crops grown - crops using sewage can only be used for non-human consumption.

   this reduces the lands ability to produce valuable crops. Which means less tax and jobs to the county. What the sewage district is "saving" becomes a loss to the general community.

2. Sewage effluent always has more salt than the original water going into the development. Since water tables are high in the delta, salts will build up in the soil. to keep the soil productive

the salts need to be removed. Which means using additional fresh water. Where does the salts go? Down the drainage systems and into the delta surface waters. Many of these salts may be nutrients which will cause an undesirable alga blooms.

I presume from the name of your commisson, you are to protect the Delta. Do your job and reject this proposal.

My recommendation is, the sludge be used on land that has always been used for pasture, and the liquids be used on golf courses, parks, and other open spaces within the development.

Sincerely

Victor C. Andresen
1070 Yosemite Dr.
Chico, CA 95928

APR - 4 REC'D

Celia K. Andresen

5555 Montgomery Drive L3

Santa Rosa Ca. 95409

April 1 1996

Margit Aramburu

Executive Director

Delta Protection Commission

Dear Ms Aramburu:

What a shocking statement " that the Delta Protection Commission proposes to dispose of sewage in the Primary Zone of the San Joaquin Delta" What are you PROYECTING? Are you bowing to the Greed of developers?

Trimark is planning a large town just over the area that abutts the southwest corner of the Delta They propose calling it "Mountain House" they should keep it and the sewage in the mountains.

I am utterly opposed to the desecration of some of the finest agricultural land in the world.

I favor title 14 California code of regulation Chaptor3. section 20030 "Sewage (etc.) shall not be located within the Delta Primary Zone."

In this country we have had too much destroution in the name of progress when it is for a few making more money now.

Yours truly,

Celia Andresen

Celia Andresen

(5)

March 31, 1996

APR - 3 REC'D

Margit Aramburu,Executive Director
Delta Protection Commission
PO Box 530
Walnut Grove, CA 95690

Delta Protection Commission:

We wish to go on record supporting the land use policy adopted by the Commission that prohibits disposal in the Delta of urban sewage effluent and sludge.

The sludge and effluent dumping will not benefit the land or crops grown in the Delta. It is our understanding domestic dairy farmers and foreign markets have stated crops grown on land using effluent and sludge will not be marketable.

Thank-you.

Arnold and Ann Strecker
1267 Undine Road
Stockton, CA 95206

(6)

APR - 3 REC'D

April 1, 1996

Margit Aramburu
Executive Director
Delta Protection Comission
P.O.Box 530
Walnut Grove, CA 95690

Dear Madam,

Inasmuch as the Saramento-San Joaquin Delta is a primary resource essential to the agricultural and recreational integrity of its region, every effort should made to protect it from such usage as sewage treatment and disposal which can only deteriorate the quality of the area for more beneficial and salutary dispositions.

I, therefor, urge the adoption of the proposed Section 20030 of Title 14, California Code of Regulations, Chapter 3.

Yours Truly

Douglas Erskine

Douglas Erskine
5555 Montgomery Dr Apt C 4
Santa Rosa CA 95409-8805

7

Apr. 1, '96

Delta Protection Commission:

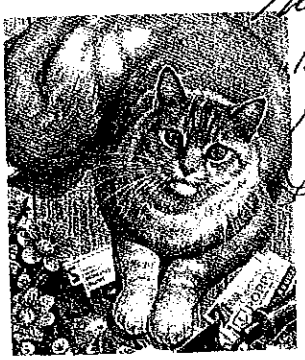
To whom it may concern: APR - 4 REC'D

In regards to the Sewage Effluent and Sewage Sludge in the primary zone of the Sacramento - San Joaquin Delta.

I am definately against any Sewage disposal on Roberts Island. Roberts Island is a Green Belt area for agriculture, and this land is needed to produce products for the people.

To Many "NO"

Mrs. Nancy Mufra
13091 Willow Glen Rd.
Roberts Island
Stockton, Ca.
95206



SUPPORT - GROUPS

APR - 8 REC'D

IRONHOUSE SANITARY DISTRICT

FAX
(510) 625-0169

450 Walnut Meadows Drive • P.O. Box 1105 • Oakley, CA 94561

Telephone
(510) 625-2279

April 8, 1996

VIA: TELECOPIER 916-776-2293

Delta Protection Commission
14215 River Road
P.O. Box 530
Walnut Grove, California 95960
Attn: Ms. Margit Aramburu, Executive Director

Re: Comments on Proposed Regulation 20030

Dear Commissioners:

On behalf of the Board of Directors of Ironhouse Sanitary District (the "District"), thank you for the opportunity to comment on Regulation 20030, which is proposed for adoption by the Delta Protection Commission (the "Commission"). The proposed regulation provides:

> New sewage treatment facilities (including storage ponds) and areas for disposal of sewage effluent and sewage sludge shall not be located within the Delta Primary Zone.
>
> [Note: The Rio Vista project, as described in the adopted Final Environmental Impact Report for such project, and the Ironhouse Sanitary District use of Jersey Island for disposal of treated wastewater and biosolids are exempt from this policy.]

As stated in the February 23, 1996 Staff Report to the Commission, the proposed regulation is a verbatim restatement of Utilities and Infrastructure Policy P-3. Until set aside by the Commission, Policy P-3 was included in the Land Use and Resource Management Plan, adopted by the Commission on February 23, 1995.

My comments focus on the reasons supporting the exemption contained in this regulation for Ironhouse Sanitary District's use of Jersey Island.

Location of Jersey Island within the Delta Primary Zone

Jersey Island is located at the western edge of the Primary Zone of the Sacramento-San Joaquin Delta (the "Delta"). In contrast to areas located within the central and eastern Primary Zone, the western edge of the Primary Zone is directly subject to the tidal flows,[1] as well salinity intrusion,[2] from the San Francisco Bay. Given its location, staff of the Commission has concluded the District's proposed use of Jersey Island "would not release materials into critical aquatic habitats or drinking water sources located in the central Delta Primary Zone."[3]

History of Ironhouse Sanitary District Use of Jersey Island

The District provides sanitary sewage service to the Oakley and Bethel Island communities and nearby areas in eastern Contra Costa County. In April, 1993, the District purchased 2,900 acres of grazing land on Jersey Island for approximately $4 Million and has invested substantial additional sums since then. Jersey Island is located in the Delta Primary Zone.

As set forth in the District's Wastewater Facilities Project, first proposed in 1990 and approved by the District's Board of Directors on November 1, 1994,[4] the Project will "use treated effluent to irrigate agricultural lands on Jersey Island," and will beneficially reuse biosolids "as a fertilizer and a soil amendment by application on agricultural lands on Jersey Island."[5] These agricultural lands include potentially 2,600 of the 2,900 acres owned by the District on Jersey Island. The District will not apply treated effluent and biosolids to lands on Jersey Island which it does not own. The District has no intention of selling or making any commercial use of the treated effluent or biosolids it applies to the agricultural lands it owns on Jersey Island.

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[1] Background Report on Environment, Delta Protection Commission, December, 1993, pp. 36-37.
[2] Id. at p. 10.
[3] Staff Report and Environmental Analysis for the Proposed Amendment to the Land Use and Resource Management Plan, dated February 23, 1996, p. 12.
[4] Ironhouse Sanitary District Resolution 94-27, dated November 1, 1994.
[5] Id. at page 1.

The District's Wastewater Facilities Project was the subject of a Final Environmental Impact Report, certified on November 1, 1994.[6] The Commission, through its Executive Director, submitted two letters commenting on the Draft EIR.[7] In response, the District determined that its proposed uses of Jersey Island did not appear to be "development," as defined by Section 29723(b)(1) of the Delta Protection Act, and if these uses are not development, they are not subject to the requirement of consistency with the Act.[8]

Nonetheless, in the interest of furthering the basic goals of the State of California for the Delta, the Final EIR included analyses of the consistency of the District's Wastewater Facilities Project with (a) the relevant policies of the July, 1994 draft of the Land Use and Resource Management Plan, which was then being circulated, and (b) the eleven criteria specified in Public Resources Code Section 29763.5. These analyses determined that the Project is consistent with both the policies and the criteria, including the then current draft of Utilities and Infrastructure Policy P-3.[9]

Since 1991, the District has expended substantial public funds related to the acquisition of Jersey Island and its maintenance and preparation for the use of treated effluent to irrigate grazing and forage crops, and the beneficial reuse of biosolids as a fertilizer and a soil amendment by application on agricultural lands. These costs, which are summarized in Exhibit A, total approximately $7 Million.

Relationship of the Jersey Island Project to the Delta Protection Commission

As shown by Exhibit B, the District's plan to use treated effluent to irrigate agricultural lands on Jersey Island and to beneficially reuse biosolids as a fertilizer and a soil amendment by application on agricultural lands on the Island was initiated

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[6] Ironhouse Sanitary District Wastewater Facilities Plan & Delta Environment Science Center, Final Environmental Impact Report, SCH 92093042, October, 1994.

[7] M. Aramburu letters dated August 23, 1994 and September 1, 1994 to David N. Bauer, District Manager, Ironhouse Sanitary District.

[8] Ironhouse Sanitary District Wastewater Facilities Plan & Delta Environment Science Center, Final Environmental Impact Report, SCH 92093042, October, 1994, p. 3-1A.

[9] Draft Utilities Policy P-3 then read as follows: "Wherever possible, sewage treatment facilities and holding ponds serving uses outside the Delta should be located outside the Primary Zone and should dispose of treated wastewater on land. Where appropriate and feasible, treated wastewater should be disposed of on land to support agriculture, wildlife habitat, and/or recreation. The level of treatment of wastewater should allow continuation of the recent or present agricultural practices and should be monitored to ensure long-term viability of commercial agriculture in the Delta."

prior to the adoption of the Delta Protection Act in September, 1992. This planned use of Jersey Island was well-advanced in its development before Utilities and Infrastructure Policy P-3 emerged in the form in which it was adopted in February, 1995. The District approved the Wastewater Facilities Project, which included this use of Jersey Island, on November 1, 1994.

Conclusion

There are several factors distinguishing the use of Jersey Island planned by the District from the other projects proposing the land application of wastewater and biosolids within the Primary Zone of the Delta. Any one of these factors is sufficient to support the exemption granted to the Ironhouse Sanitary District with respect to proposed Regulation 20030. Given these factors, it is also reasonable for the Commission to grant this exemption to the use of Jersey Island planned by the District.

One, the Ironhouse Sanitary District is a local government agency and it is not engaged in profit-making commerce. The District seeks to deliver a public service to its rate-payers.

Two, the Project proposed by the District has a certified Final EIR. No further environmental review is required in order to implement the Project.

Three, absent the exemption, the Ironhouse Sanitary District, including its residents and ratepayers, would be unfairly and unjustly prevented from realizing the benefits of actions taken by the District in the exercise of its police powers. These actions are necessary to maintain the public health, safety and welfare.

Four, the actions of Ironhouse Sanitary District relating to the use of Jersey Island, including the expenditure of substantial public funds, significantly pre-date both the adoption of Regulation 20030, assuming it is adopted by the Commission, and its predecessor, Policy P-3. As noted in Exhibit B, the District had already expended approximately $4 Million to purchase Jersey Island for its intended purpose one year and eight months before the Commission considered the December, 1994 draft of Policy P-3. This draft included language not included in any prior versions of this policy, which stated: "Local governments shall not acquire

or condemn agricultural lands in the Primary Zone for the principal purpose of receiving treated wastewater and/or biosolids ...."[10]

Five, if Ironhouse Sanitary District is not granted the exemption and is thus prevented from going forward with its Project, it would lose the substantial investment of public funds each agency has made to date. The District has expended approximately $7 Million to date in the acquisition of Jersey Island and its preparation for its intended use.

Six, given its geographic location within the Delta Primary Zone, Jersey Island is differently situated with respect to the central and eastern Delta. In other words, the location of Jersey Island justifies the exemption of Ironhouse Sanitary District's intended use of the Island from Regulation 20030.

Seven, since the District will only dispose its effluent and biosolids on its own property and will not make any commercial use of its effluent and biosolids, the proposed exemption does not disadvantage commercial enterprises outside the Primary Zone who seek to dispose of this material inside the zone. Rather, proposed Regulation 20030 promotes public health, safety, and the environment, as amply set forth in the Administrative Record, while it evenhandedly excludes from the Primary Zone all commerce in the land application of effluent and biosolids.

Summary

Ironhouse Sanitary District requests that the Commission follow the precedent it established with Utilities and Infrastructure Policy P-3 and exempt the Ironhouse Sanitary District use of Jersey Island for disposal of treated wastewater and biosolids from Regulation 20030. I also note that many of the reasons stated above would support granting Rio Vista the same exemption from Regulation 20030 which the Commission granted with respect to Policy P-3. Thank you for your attention to this letter.

Very truly yours,

for David N. Bauer, District Manager

[10] Land Use and Resource Management Plan for the Primary Zone of the Delta, December, 1994, p. 13.

Exhibit A

Item	Jersey Island Acquisition & Preparation Costs Through June 30, 1996
Consulting	88,427
Montgomery Watson	94,021
EIR (ESA, etc.)	20,537
Legal (includes experts & specialties)	145,096
Appraisal, Prelim Testing	16,675
Soils Testing	22,676
Land Purchase (1)	5,120,713
Staff Salaries	306,802
RD 830 Assessments	532,767
Equipment, Materials & Fuel (2)	649,330
Jersey Island Pipeline	6,126
Professional Services	21,542
Jersey Island Improvements	41,224
Totals	7,065,936

Source: ISD, April, 1996

(1) Includes both 1993 purchase and land under contract for purchase by June 30, 1996.

(2) Includes levee upgrading and other improvements and repairs on Jersey Island.

EXHIBIT B
TIMELINE FOR IRONHOUSE SANITARY DISTRICT JERSEY ISLAND PROJECT

1990	Ironhouse learns direct water discharge to San Joaquin River is infeasible, identifies Jersey Island as possible location for land application of treated wastewater and biosolids. Jersey island later becomes part of the Delta Primary Zone.
5/91	Ironhouse engineers recommend acquisition of Jersey Island.
6/91	Ironhouse Board of Directors adopts recommendation, designating Jersey Island for acquisition.
8/91	Ironhouse issues first Notice of Preparation of its EIR, designating Jersey Island as site for constructed wetlands using reclaimed water.
9/8/93	Ironhouse issues second Notice of Preparation still designating Jersey Island as site, but for agricultural use with reclaimed water irrigation.
9/23/92	Governor approves Delta Protection Act of 1992.
1/93	First meeting of Delta Protection Commission.
2/93	Commission begins search for executive director
4/21/93	ISD closes purchase of 2,900 acres of Jersey Island for approximately $4 million.
5/27/93	Margit Aramburu, Executive Director, begins work for Commission.
8/93	Commission moves into its offices.
9/30/93	Commission adopts its first planning program.

10/93 Commission staff begins background reports.

1/94 Commission's Background report on Utilities and Infrastructure completed. Proposed Policy for sewage treatment:

"Wherever possible, sewage treatment facilities for uses outside the Delta should be located outside the Primary Zone and should dispose of treated wastewater on land. Where appropriate and feasible, treated wastewater should be disposed on land to support agriculture, wildlife habitat, and/or recreation." Policy C, p. 30.

7/94 Draft Land Use and Resource Management Plan issued. Proposed policy for sewage treatment:

"Wherever possible, sewage treatment facilities and holding ponds serving uses outside the Delta should be located outside the Primary Zone and should dispose of treated wastewater on land. Where appropriate and feasible, treated wastewater should be disposed of on land to support agriculture, wildlife habitat, and/or recreation. The level of treatment of wastewater should allow continuation of the recent or present agricultural practices and should be monitored to ensure long-term viability of commercial agriculture in the Delta." (Policy P-3, pages 11-12.)

7/94 Ironhouse publishes Draft EIR for the Wastewater Facilities Project.

8/94 and 9/94 Ironhouse receives two letters from Commission commenting on the Draft EIR. Neither letter comments on Jersey Island or its proposed use.

11/1/94 Ironhouse certifies the Final EIR for the Wastewater Facilities Project and approves the construction of the Project.

12/94 Draft Land Use and Resource Management Plan issued. Proposed policy for sewage treatment:

> New sewage treatment facilities and holding ponds serving uses outside the Delta shall be located outside the Primary Zone. Local governments shall not acquire or condem agricultural lands in the Primary Zone for the principal purpose of receiving treated wastewater and/or biosolids shall be released onto or into such lands.
>
> [Note: The Ironhouse Sanitary District project and Rio Vista project, as described in the respective adopted Final Environmental Impact Reports, are exempt from this policy.] (Policy P-3, Page 13.)

2/23/95 Commission adopts Land Use and Resource Management Plan for the Primary Zone of the Delta, including Utilities and Infrastructure Policy P-3 in its final form.

1/5/96 Sacramento County Superior Court orders Commission to set aside Policy P-3.

3/28
4/4 and
4/8/96 Commission holds Public hearings on Regulation 20030.

4/25/96 Commission considers adoption of Regulation 20030.

APR - 8 RECD

California Farm Bureau Federation

DEPARTMENT OF ENVIRONMENTAL ADVOCACY

1601 EXPOSITION BOULEVARD, FB 3
SACRAMENTO, CA 95815

CAROLYN S. RICHARDSON, Director
DAVID J. GUY
RONALD LIEBERT
Attorneys at Law

TELEPHONE (916) 924-4036
FACSIMILE (916) 923-5318

April 8, 1996

VIA FACSIMILE AND MAIL [916-776-2293]

Patrick McCarty, Chairman
Members of the Commission
Delta Protection Commission
P.O. Box 530
Walnut Grove, CA 95690

Re: Proposed Delta Protection Commission Regulation for Location of New Sewage Treatment Facilities and Areas for Disposal of Sewage Effluent and Sewage Sludge

Dear Chairman McCarty and Members of the Commission:

As the sponsor of the Delta Protection Act of 1992 ("Act"), the California Farm Bureau Federation ("Farm Bureau") is very encouraged by the Commission's notice of proposed rulemaking to address the use of sewage sludge in the primary zone of the delta. We strongly urge you to adopt proposed §20030 of Title 14 of the California Code of Regulations, which includes a prohibition against the disposal of sewage effluent and sludge in the primary zone of the delta. To support your decision, we encourage the Commission to focus upon the unique nature of the delta, which is the defining characteristic that makes the proposed regulation necessary.

Farm Bureau has two primary areas of concern that both relate to the unique nature of the delta and should be considered by the Commission. First, the disposal and application of sewage sludge is not compatible with delta agriculture and its application raises substantial issues of public health and safety. Second, the application of sewage sludge will not only jeopardize delta agriculture, but it will also threaten the major water supply for the State of California. The delta is simply too important a resource to jeopardize by applying sewage sludge.

A. The Delta is a Unique Resource

The delta is a unique resource that deserves special attention. The findings in the Act eloquently describe this unique character and warrant close review. (Pub. Res. Code §29700 et seq.) As an example, the Legislature has provided that:

> "[T]he Sacramento-San Joaquin Delta is a natural resource of state-wide, national, and international significance, containing irreplaceable resources, and it is the policy of the state to recognize, preserve, and protect those resources of the delta for the use and enjoyment of current and future generations."

(Pub. Res. Code §29701.) Additionally, the Department of Water Resources in the introduction to its "Delta Atlas" has stated that:

> "The delta is a unique and valuable resource and an integral part of California's water system. It receives runoff from over 40 percent of the state's land area including flows from the Sacramento, San Joaquin, Mokelumne, Consumnes, and Calaveras rivers. The delta provides habitat for many species of fish, birds, mammals, and plants; supports agricultural and recreational activities; and is the focal point for water distribution throughout the state.

The Central Valley region contains the watersheds that supply most of the water in the state. The delta is the common pool from which water is used by the entire state. The consequences of extensive degradation of the water supply in the delta could be catastrophic.

From a geologic standpoint, the delta is primarily comprised of organic peat soils, which are highly productive for agriculture and yet are very prone to subsidence. A large portion of the delta primary zone has a land surface that is below sea level. (See attached map from DWR's "Delta Atlas" at page 28.) The instability of these peat soils combined with the surface land level below sea level poses an obvious risk of levee failures, dam failures, and flooding. The low surface elevations in relationship to the surface water means that the water table below many of the agricultural lands is very near the surface. The groundwater and the drainage water must be pumped from the farmland over the levees and into the nearby surface water channels. Taken together, these geographic characteristics are extremely unique and when considered together with the potential degradation to the state's water supplies, strongly suggest why sewage sludge should not be applied within the delta.

B. The Proposed Resolution is Necessary to Protect the Unique Natural Resources in the Delta.

Sewage sludge application in the delta is currently regulated by the U.S. Environmental Protection Agency, which has set minimum standards that apply to the entire United States. The U.S. EPA's 503 regulations are the lowest common denominator for the entire U.S., and in this regard were clearly intended to only serve as minimum baseline standards. The U.S. EPA has expressly recognized that more stringent local rules would be necessary to address different areas of the country, particularly those areas that are unique in nature. (40 C.F.R. §503.)

In the Central Valley, the Regional Water Quality Control Board for the Central Valley Region has the authority to issue general waste discharge requirements. The California Legislature has specifically provided as part of this legislation that the Commission has the planning authority in its resource management plan "to regulate the application of sewage sludge and other biological solids to land within [the primary zone of the delta]." (Water Code §13274(i).)

As the Commission knows, the Central Valley Regional Water Quality Control Board last year approved general waste discharge requirements and a waiver resolution for sewage sludge application. Importantly, the Regional Board's requirements allow certain applications of sewage sludge in the primary zone of the delta without site-specific review. These applications of sewage sludge pose a serious threat to agriculture and water quality in the delta. For this reason, we have petitioned the State Water Resources Control Board (SWRCB) to review the general waste discharge requirements. The SWRCB's draft order, which is attached for the record, has recommended that the Regional Board prepare an Environmental Impact Report (EIR) to assure that the environmental effects of sewage sludge application are adequately addressed. The SWRCB is justifiably concerned about the potential environmental effects of sewage sludge application in the delta and throughout the state.

It has also been suggested that the California Department of Food and Agriculture ("CDFA") regulates sewage sludge application. This is partially true. The CDFA does regulate municipal sewage sludge as a fertilizing material. Attached for the Commission's review is a letter from CDFA which emphasizes that the purview of CDFA is limited to ascertaining that products are properly labeled with respect to nitrogen, phosphorous and potash. The letter states that CDFA staff does no independent certification of the safety of such products and there is absolutely no review or monitoring of either heavy metals or pathogens, which are the primary problems with the application of sewage sludge. The classification and licensing of certain classes of sewage sludge as fertilizers by CDFA therefore does not limit the authority of the DPC to regulate application of such substances on lands within the primary zone. (Also see Water Code § 13274(h) and (i); People ex rel. Deukmejian v. County of Mendocino (1984) 36 Cal.3d 476 (upheld local authority to prohibit aerial application of phenoxil herbicides, despite the fact that pesticide application was heavily regulated both by federal and state laws).) The DPC can regulate and prescribe conditions for application of sewage sludge and other biological solids on land within their jurisdiction even if the material to be applied is licensed for uses of fertilizer by the California Department of Food and Agriculture.

A close review of these agencies' authority with respect to sewage sludge shows that certain local agencies, such as the Commission, not only have the authority to regulate sludge application in a more stringent manner than federal or state laws, but that given a unique local geographic situation, a more stringent regulation is necessary to protect natural

resources and the public health and safety. The proposed regulation is therefore neither complex nor redundant, but is a necessary supplement to the rules that apply to sewage sludge in the delta. As previously discussed, the unique nature of the delta clearly supports the need for a prohibition of sewage sludge to protect natural resources (including agriculture) in the delta.

C. The Proposed Regulation is Important to Farmers and Ranchers

California and delta farmers and ranchers are very concerned about sewage sludge in the primary zone. A primary focus of the 1992 Legislation was the protection of agriculture in the delta:

(a) The delta is an agricultural region of great value to the state and nation and the retention and continued cultivation and production of fertile peatlands and prime soils are of significant value.

(b) The agricultural land of the delta, while adding greatly to the economy of the state, also provides a significant value as open space and habitat for water fowl using the Pacific Flyway, as well as other wildlife, and the continued dedication or retention of that delta land and agricultural production contributes to the preservation and enhancement of open space and habitat values.

(c) Agricultural lands located within the primary zone should be protected from the intrusion of non-agricultural uses.

(Pub. Res. Code §29703.) We urge the Commission to maintain agriculture in the delta.

It has been made very clear by certain sludge purveyors that they will continue to file lawsuits if the Commission does not back down from its highly principled decision to prohibit sludge application in the delta. The Commission should not succumb to this type of extortion. These same sludge purveyors also challenged local prohibitions on sludge application in Virginia. (Welch v. Board of Supervisors of Rappahannock County (1995) 888 F.Supp 753.) In that case the sludge purveyor was unsuccessful as the court found that the local prohibition was not in conflict with federal laws and therefore was allowed.

Due to the unique nature of the delta, and based on these concerns, Farm Bureau will continue to make all efforts to prohibit sewage sludge in the primary zone of the delta. Recall that Farm Bureau has already submitted papers to the U.S. District Court in support of the Commission's position that local management of the delta resource is not in violation of federal constitutional principles. Although the Judge has delayed ruling in this case, at the appropriate time, we will continue to make every effort to support the Commission in this

proceeding. We will also support the Commission in other legal proceedings that will uphold the prohibition on sewage sludge.

Thank you for the opportunity to provide comments on this important issue. If you have any questions in the meantime, please feel free to call me at the above number, or John Gamper at (916) 446-4647.

Sincerely yours,

DAVID J. GUY

DJG/GL040296.002

cc: Senator Patrick Johnston
Margit Aramburu
Richard Frank
John Gamper
County Farm Bureaus
(all via facsimile)

APR - 8 REC'D

SAN JOAQUIN FARM BUREAU FEDERATION

MEETING TODAY'S PROBLEMS / PLANNING FOR TOMORROW

April 8, 1996

Delta Protection Commission
Margit Aramburu, Executive Director
P.O. Box 530
Walnut Grove, CA 95690

VIA FACSIMILE - (916) 776-2293

Dear Commission Members:

The San Joaquin Farm Bureau Federation, the largest farmer-based organization representing agriculture in the Delta area, strongly endorses your efforts to adopt a regulation governing new sewage treatment facilities and areas for disposal of sewage effluent and sewage sludge within the primary zone of the Sacramento-San Joaquin Delta. The San Joaquin Farm Bureau Federation also records its support for the Commission's "statement of reasons supporting adoption of regulation."

The San Joaquin Farm Bureau Federation believes that the Commission is tremendously justified in its attempts to formulate and adopt this regulation, and finds it ironic that the only voices that appear to be in contradiction are those who are being paid large sums of money to dump sewage sludge on our productive agricultural lands. Farmers are not concerned of being hurt by any such regulation by the Commission. Those actively involved in production agriculture within the primary zone of the Delta in fact embrace this attempt to ensure that their livelihood will be further protected from the dangerous situations that could arise in the future dealing with runoff pollution, water quality, marketability of produce, export ability of produce, liability lawsuits, and the actual farm ability of their lands.

The San Joaquin Farm Bureau Federation stands ready to assist the Delta Protection Commission in anyway that we can to ensure that your regulatory efforts are successful for the protection of agriculture within the Delta. If you have any questions please contact Russ Matthews, Director of Natural Resources at (209) 931 - 4931.

Sincerely,

William E Bechthold

WILLIAM E. BECHTHOLD
President

WB/rm

cc:
Honorable Patrick Johnston
Honorable Dick Montieth
Honorable Larry Bowler
Honorable Mike Machado
Honorable Sal Canella
Bob Vice, CFBF President
Bruce Mettler, CFBF Director
David J. Guy, CFBF Counsel

(23)

POST OFFICE BOX 8444 • 3290 NORTH AD ART WAY • (209) 931-4931 • STOCKTON, CA 95208

APR - 8 RECD

CONTRA COSTA
WATER DISTRICT

ENGINEERING DEPARTMENT
2300 Stanwell, Suite A
P.O. Box H20
Concord, CA 94524
(510) 688-8000 FAX (510) 688-8303

Fax 916/776-2293

April 4, 1996

Margit Aramburu, Executive Director
Delta Protection Commission
14215 River Road, P.O. Box 530
Walnut Grove, California 95690

Subject: Proposed Amendment to the Land Use and Resource Management Plan for the Primary Zone of the Delta and Adoption of Regulation Governing Siting of New Sewage Treatment Facilities and Areas for Disposal of Sewage Effluent and Sewage Sludge in the Primary Zone of the Delta.

Dear Ms. Aramburu:

Thank you for the opportunity to review the staff report and texts for the proposed Land Use and Resource Management Plan amendment and proposed regulation to prohibit the development of new sewage treatment facilities and disposal of sewage effluent and sludge within the Primary Zone of the Delta.

The Contra Costa Water District (CCWD) strongly supports both the proposed amendment and the regulation because they would eliminate future sources of surface water contamination and degradation that could occur as a result of potential sewage effluent and sludge discharges into any of the water courses throughout the Primary Zone of the Delta. Current and proposed regulations governing drinking water quality make these proposed rules imperative. They will help reduce the likelihood of cryptosporidium and giardia contamination in the Delta and reduce the risks to 20 million Californians who rely on the Delta for drinking water.

CCWD draws water from two existing Delta water courses (Rock Slough and Mallard Slough off the San Joaquin River) for both treatment as a drinking water supply for over 400,000 residents in central and eastern Contra Costa County and as raw water supply for industrial and irrigation customers. Water is drawn continuously from Rock Slough and occasionally from Mallard Slough when water quality is acceptable. In addition to the two existing intakes, CCWD is constructing a third intake on Old River, immediately south of Highway 4, as part of the Los Vaqueros Project. The purpose of the $450 million Los Vaqueros Project is to provide high quality water to District customers. The proposed amendment and regulations will help ensure that the District will be able to meet its water quality goals and will help prevent further degradation of the delicate Delta environment.

CCWD is committed to providing the highest quality water to its municipal and raw water customers and is actively seeking ways on all fronts to protect and improve the quality of its existing water supplies. The Executive Director's Staff Report clearly indicates the potential for severe water quality degradation if levee failures or natural disasters result in damaged sewage facilities or the introduction of sewage and sludge

into the fragile Delta environment. The proposed amendment and ordinance are direct means that would ensure that no new sewage treatment plant would be developed in, and no sewage sludge would be deposited on, lands of the Primary Zone.

Thank you again for the information on the proposed amendment and ordinance, as well as the continued recognition and assistance provided by the Delta Protection Commission in helping CCWD meet it's water quality objectives.

Sincerely,

Gregory Gartrell
Director of Planning

GG/DP/dlh

cc: Harvey Bragdon, Contra Costa County
Stan Davis, City of Antioch
Mike Yeraka, Diablo Water District
Robert Soderberry, City of Pittsburg
Marcia Raines, City of Martinez
James Carson, California Cities Water Company
Dave Goleck, City of Concord
Kevin Roberts, City of Walnut Creek
Richard Bottarini, City of Pleasant Hill
Randall Hatch, City of Clayton

CONTRA COSTA
WATER DISTRICT

ENGINEERING DEPARTMENT
2300 Stanwell, Suite A
P.O. Box H20
Concord, CA 94524
(510) 688-8000 FAX (510) 688-8303

Via Fax 916/776-2293

April 8, 1996

Margit Aramburu, Executive Director
Delta Protection Commission
14215 River Road, P. O. Box 530
Walnut Grove, California 95690

Subject: Additional Comments on Proposed Amendment to the Land Use and Resource Management Plan for the Primary Zone of the Delta and Adoption of Regulation Governing Siting of New Sewage Treatment Facilities and Areas for Disposal of Sewage Effluent and Sewage Sludge in the Primary Zone of the Delta.

Dear Ms. Aramburu:

Thank you for the opportunity to provide comments on the proposed amendment and regulation prohibiting new sewage treatment facilities and the disposal of sewage sludge in the Primary Zone of the Delta until the close of business today, April 8, 1996. These comments are in the form of clarification related to comments made at the public hearing held this morning at the Antioch Community Center in Antioch. The Contra Costa Water District (CCWD) feels that it is important that the Delta Protection Commission fully understands all conditions leading to the District position which is in strong support for the proposed actions.

It was stated that the wastewater application on Jersey Island "should not affect CCWD, [because it is] downstream from CCWD intakes." It must be understood that because of the tidal nature of Delta flows, pollutants are distributed throughout the Delta area. For example, CCWD experiences sea water intrusion at its Rock Slough intake, because of tidal influences. Also, it must be pointed out that CCWD's Mallard Slough intake is located to the West of Jersey Island - often associated as a "downstream" location.

It was also stated that "cryptosporidium and giardia are everywhere and water agencies have to deal with them." This statement was apparently prompted by the statement provided by CCWD that CCWD was concerned about the spread of these two pathogens and that origins have been identified with wastewater releases into public water supplies. CCWD agrees that cryptosporidium and giardia are found in many water bodies; however, the issue is source control and pollution prevention in public drinking water. Any discharges arising from new treatment facilities and sludge depositions in the Primary Zone will increase concentrations and increase the public health risk not only to CCWD's customers, but also to the 20 million Californians who depend on the Delta for its drinking water supplies.

Please incorporate these comments, for clarification purposes, as an augmentation of CCWD's written (April 4, 1996) and verbal (April 8, 1996) comments in support of the proposed actions that would prohibit new treatment facilities and sludge disposal in the Delta's Primary Zone.

Sincerely,

Gregory Gartrell
Director of Planning

GG/DP/dc

COALITION FOR SLUDGE EDUCATION

Jane E. Beswick, Coordinator
12801 W. Bradbury Road, Turlock, CA 95380
PHONE/FAX (209) 634-3885

April 8, 1996

Ms. Margit Aramburu
Executive Director
DELTA PROTECTION COMMISSION
14215 River Road
P.O. Box 530
Walnut Grove, CA 95690

By FAX: (916) 776-2293

SUBJECT: PROPOSED ADOPTION OF REGULATION GOVERNING SITING OF NEW SEWAGE TREATMENT FACILITIES AND AREAS FOR DISPOSAL OF SEWAGE EFFLUENT AND SEWAGE SLUDGE IN THE PRIMARY ZONE OF THE SACRAMENTO-SAN JOAQUIN DELTA

Dear Ms. Aramburu:

This letter is being sent in opposition to spreading sewer sludge and wastewater effluent in the Primary Zone of the Delta.

One issue of primary importance concerns the lack of research which proves health safety--not one epidemiology study--only a health risk assessment done by U.S. EPA. The U.S. Office of Technology Assessment said in a January 14, 1994 Press Advisory, "Health risk assessment research is itself at risk." (Exhibit 1)

OHIO STUDY DOES NOT PROVE HEALTH SAFETY (Exhibit 2)

There was a study done in Ohio in the 1980's which is regularly cited but definitely does not prove health safety. A few facts about that study are:

--Disclaimer on first page says, "The absence of observed human or animal health effects...was associated with low sludge application rates... Caution should be exercised in using these data to predict health risks associated with sludges containing higher levels of disease agents and with higher application rates and larger acreages treated per farm..."

--Application was based on the soil phosphorous requirements. Application under the 503 regulations is based on the agronomic rate of nitrogen needed for the crop. These two methods are not the same. Phosphorous is more restrictive than nitrogen.

--There were more dogs (45) and cats (29) than bovine animals (72) on the 93 farms in the study.

--Less than 28% of the farms actually completed the study.

Citing a study which does not prove what is claimed, could be due to ignorance or it could be intentionally deceptive. Either way, it is not accurate and it gives a false assurance of safety in promoting sewer sludge (biosolids).

The U.S. EPA helped fund the Ohio study and should know what's in it. If they don't, then they should read the entire study before citing it as proof of health safety.

I'm enclosing a copy of the study so you can see if my interpretation of it is accurate. (Exhibit 2)

NOT ALL SCIENTISTS AGREE LAND APPLICATION IS SAFE (Exhibit 3)

The enclosed paper lists concerns some experts have expressed about land application and U.S. EPA's Beneficial Use Policy.

The recently released National Academy of Sciences report, "Use of Reclaimed Water and Sludge in Food Crop Production" contains many conditional statements which leave a myriad of unanswered questions about the safety of land application.

QUESTIONS TO ASK

1. If sludge is a benign product, why do the generators and purveyors refuse to assume liability for this material?

2. Why was it necessary for the Water Environment Federation to obtain a $300,000 grant from the U.S. EPA to hire the public relations firm, Powell-Tate, in Washington, D.C. to develop a plan to promote land application and enhance the image of sludge.

3. If there haven't been bad results, why did the U.S. EPA give a second $300,000 grant to the Water Environment Federation to develop "The Rest of the Story" articles for 19 specific cases where there have been bad results from spreading sludge?

   The most disappointing aspect is these bad results are being treated as a public relations problem rather than an opportunity to fix whatever caused the problem. The industry seems more intent in putting a positive spin to the problem than fixing it.

4. Why is the governmental agency charged with oversight (U.S. EPA) working in concert with the sludge industry to promote a practice it also regulates?

VERMONT DEBATE - ALAN RUBIN, Ph.D vs STANFORD TACKETT, Ph.D

Alan Rubin stated that a 3 foot depth to groundwater was assumed for EPA's risk assessment. (On Videotape)

If that is the case, the risk assessment would not be valid for the Sacramento-San Joaquin Delta.

DELTA COULD BE TARGETED FOR BAY AREA EFFLUENT

If the Delta Protection Commission does not prohibit effluent in the Primary Zone, it will increase the economic feasibility of making the delta a place to dispose of bay area effluent. A prohibition might cause the bay area to look for ways to clean up and use their waste water rather than sending it to the San Joaquin Valley to irrigate farm land.

OTHER DISPOSAL OPTIONS

Interstate Waste Technologies, Inc., St. Charles, Maryland and Malvern, Pennsylvania have a process to recycle sludge and convert it to methanol and other useful products. According to materials obtained from Ray Kenard:

> "Sludge gasification technology developed and proven in Germany will gasify the sludge, producing a synthesis gas, a vitrified slag aggregate and sulfur. The synthesis gas is converted to methanol in a standard catalytic process. Methanol is a Clean Air Act fuel or fuel component. The vitrified slag aggregate is a substitute for sand in asphalt paving mixtures. The process produces no ash requiring further disposal."

The only hitch may be in obtaining a sufficient quantity of sludge to ensure a viable economic enterprise. It would require about 250 to 300 dry tons per day. Currently, most sludge is already committed to companies in the land application business. Their income could be jeopardized if sludge was not available to them. Additionally, there may be long-term contracts in place which would limit the supply of sludge available.

Gasification could be a way to recycle without involving our productive agricultural land in the central valley or endangering our health or the public's perception of a safe food supply.

Ray Kenard of Interstate Waste Technologies, Inc. has agreed to send you information on this process from his office.

SUMMARY

Land application of sewer sludge in the primary zone of the delta should be prohibited due to lack of research which proves health safety, the lack of consensus among scientists, the depth to groundwater not fitting the risk assessment assumptions made by

U.S. EPA and the fact that there are other disposal options available which can be less risky and economically viable.

Thank you for accepting my comments concerning this important issue.

Sincerely,

Jane E Beswick

Jane E. Beswick
Coordinator

Exhibits will be sent separately.

MAR 2 2 REC'D

SOUTH DELTA WATER AGENCY

2509 WEST MARCH LANE, SUITE 200
POST OFFICE BOX 70383
STOCKTON, CALIFORNIA 95267
TELEPHONE (209) 474-2509
FAX (209) 474-9701

March 21, 1996

Ms. Margit Aramburu
Delta Protection Commission
14215 River Road
P. O. Box 530
Walnut Grove, CA 95690

Re: Proposed Regulations Governing Sewage Treatment Facilities and Disposal of Biosolids in the Primary Zone of the Delta

Dear Ms. Aramburu:

The South Delta Water Agency supports the proposed regulations which will ban new sewer treatment facilities and the disposal of biosolids in the primary zone of the Delta. The unique soil, hydrology, and biological conditions in the Delta make it unwise to allow these materials to be used, released, or disposed of in the primary zone.

In addition, the Delta acts as a transport facility for the drinking water of approximately 20 million Californians. Since the Delta lands are susceptible to flooding, the use of these materials on the Delta would eventually lead to a catastrophic mixing of drinking water and these substances, which in the normal course of events, would be illegal. Further, the soil, hydrology, and drainage practices of the area would immediately result in a general and steady mixing of these materials with the drinking water.

In further support, numerous state laws recognize the unique value of the Delta and mandate its continued protection.

(32)

The South Delta Water Agency strongly urges the Delta Protection Commission to adopt the proposed regulations without any substantive changes.

Very truly yours,

By John Herrick (dd)
JOHN HERRICK, Attorneys for
SOUTH DELTA WATER AGENCY

JH/dd
cc: Mr. Alex Hildebrand
Dante J. Nomellini, Esq.

Dictated by writer signed
in his absence to avoid delay.

INFORMATION

CALIFORNIA LEAGUE OF
FOOD PROCESSORS
660 J STREET, SUITE 290
SACRAMENTO, CA 95814

F A X C O V E R S H E E T

DATE:	April 8, 1996	**TIME:**	2:24 PM
TO:	Margit	**PHONE:**	776-2290
		FAX:	776-2293
FROM:	Jeff Boese	**PHONE:**	916-444-9260
	CLFP	**FAX:**	916-444-2746

Number of pages including cover sheet: -2-

Message

Per your request, attached is the CLFP Position on the Use of Sewage Sludge on Croplands, adopted by our Board of Directors April 24, 1993, and reconfirmed in October of 1994.

Please contact me if you have any questions.

APR - 8 REC'D

California League of Food Processors

660 "J" Street, Suite 290 • Sacramento, CA 95814 • (916) 444-9260
FAX • (916) 444-2746

CLFP POSITION ON USE OF SEWAGE SLUDGE ON CROPLANDS

The California League of Food Processors (CLFP) recognizes that the application of sewage sludges generated by publicly owned treatment works (POTWs) to croplands can be a beneficial use when the proper conditions exist and the sludges have been determined to be safe for the use intended. CLFP, however, has serious concern that sludges produced by POTWs may contain heavy metals, human pathogens, and toxic compounds which could have potential health effects on the consumers of foods produced on lands to which such sludges have been applied. This potential risk to public health has not been adequately evaluated. Therefore, CLFP cannot endorse the application of municipal sludge to land that may or will be used in the production of foods for human consumption until the questions regarding its safety for such use are resolved. Therefore, CLFP urges the EPA, USDA, and FDA to establish an inter-agency task force to develop definitive policies and regulations which identify the specific conditions under which municipal sludges can be safely applied to land on which foods for human consumption will be produced. Furthermore, CLFP recommends that the inter-agency task force seek the advice and counsel of CLFP and other groups representing agricultural, industrial, and public interests in the development of appropriate policies and regulations.

Approved by the CLFP Board of Directors
April 24, 1993

mm
c:\lfwpwin\minutes\sludge.app

Mary Ann

APR - 8 REC'D

April 21, 1995

Kenneth Landau
Senior Engineer
Central Regional Water Quality
Control Board - Central Valley Region
3443 Routier Road
Sacramento, California 95827-3098

Initial Studies and Negative Declarations

The Department of Water Resources has reviewed the initial environmental studies and negative declarations for Waiving Waste Discharge Requirements for the Reuse of Exceptional Quality Wastewater Treatment Plant Biosolids as Fertilizer and Soil Amendment (File 95032061) and Waste Discharge Requirements General Order for Reuse of Biosolids and Septage on Agricultural, Forest, and Reclamation Sites (File 95032060). Having reviewed these documents, we are providing comments on the possible impacts on drinking water quality that may occur as a result of reuse of biosolids as proposed.

In recent years, water officials have grown increasingly concerned about microbial contamination of drinking water supplies, particularly contamination from pathogenic organisms such as *Giardia* and *Cryptosporidium*. The federal Surface Water Treatment Rule, which became effective on December 31, 1990, requires all public water systems using surface water supplies, or ground water supplies under the influence of surface water, to filter and disinfect for protection against *Giardia lamblia* and other pathogenic organisms. In addition, the proposed federal Information Collection Rule will require microbial monitoring by water treatment plants that serve certain size populations and that treat raw water of microbial concern, including monitoring for *Giardia*, *Cryptosporidium*, total coliforms, and fecal coliforms.

In light of these new regulatory standards and requirements, DWR is concerned that the proposed reuse of biosolids will result in significant contamination of sources of drinking water. DWR recommends that the prohibitions specified in the documents adequately address source drinking water contamination by pathogenic organisms.

Thank you for this opportunity to provide comments. If you have any questions, please call Raymond Tom at (916) 327-1724, or Judith Heath at (916) 327-1672.

Original signed by:

Rick Woodard, Chief
Water Quality Assessment Section
Division of Local Assistance
(916) 327-1636

Rtom:rl

c:wpdocs\wqa\landau.ltr

Campbell SOUP Company

6200 FRANKLIN BLVD.
SACRAMENTO, CA 95824-3499

APR - 8 RECD

March 29, 1996

Mr. Daryl Ferreira
Ferreira Estate Company
13545 Grand Island Road
Walnut Grove, CA 95690

Dear Daryl:

This is in response to the Policy P-3 which the Delta Protection Commission proposes to adopt. This proposal states new sewage treatment facilities and areas for disposal of sewage effluent and sewage sludge shall not be located within the Delta Primary Zone.

Policy P-3 is consistent with current Campbell Soup policy of not accepting crops grown on any land to which sewage sludge has been applied. Specifically, here is an excerpt from our 1996 tomato contract:

> Municipal (domestic) sewage sludge may not be applied to cropland to which crops subject to this Contract will be grown without prior approval of the Buyer [Campbell Soup Company]. Buyer will not accept crops grown on sewage sludge amended land unless prior authorization to use such land is given by Buyer.

Campbell Soup Company is committed to producing safe, wholesome food products which retain consumer trust. Recently the National Research Council published "Use of Reclaimed Water and Sludge in Food Crop Production". The following from this review aptly summarizes the issues confronting Campbell Soup on the issue of cropland treated with reclaimed water and sewage sludge:

> "There are negligible economic incentives for food processors to accept crops produced with reclaimed water or treated sludge. Benefits in terms of lower food costs are likely to be minimal, potential risks [e.g., pathogens, organic pollutants, trace elements] could lead to liability, and the negative public perception of food crops produced using these materials could have a negative impact on consumer demand."

The California League of Food Processors has a California industry perspective on reclaimed water and sewage sludge. You may wish to contact Mr. Jeff Boese, President of the League, for additional input.

Sincerely,

R. L. Orzalli
Director-Agriculture Operations

cc: Mr. T. Jeffrey Boese, California League of Food Processors

APR - 8 REC'D

Del Monte Foods
Plant No. 450
P.O. Box 30190
Stockton, CA 95213-0190
(209) 465-3911

April 4, 1996

Darrell R. Ferreira
13545 Grand Island Road
Walnut Grove CA 95690

Dear Darrell,

Enclosed please find a copy of the Del Monte Corporation Fruit Contract. Paragraph Eleven, *Care of Crop,* contains specific language prohibiting the use of municipal sludge, sewage or waste water on lands used to produce fruit destined for our canneries. Our vegetable contracts contain the same language.

I hope this answers your question regarding application of biosolids to crops contracted to Del Monte Foods. Thank you for your interest. If I can be of any further help please give me a call.

Sincerely yours,

Pat McCaa

James P. McCaa
Manager
Pest Management - Fruit

Enclosure

cc: S. Balling
K. Reynolds

covered by this contract grown on the premises named although not conforming to the grade and quality specified herein at the current market price therefor at place of delivery. Notice of the exercise of this option shall be given in writing.

6. REJECTIONS: Buyer may reject No. 2's unless specified on the face hereof, as well as any fruit delivered or tendered for delivery hereunder not complying with the terms and conditions hereof and may charge the same and all costs, freight and expenses paid or incurred in connection with receipt and return thereof back to Seller, giving notice verbally or in writing of any such rejection to Seller, his agent or truckman, provided, however, that the rejection of any delivery or partial delivery, or any grading down or regrading of any delivery or partial delivery, at point of delivery specified herein by Buyer shall not relieve Seller of his obligations to deliver the balance of the fruit purchased hereunder, and to this extent this contract is severable.

7. GRADING: Unless Buyer exercises the option provided in paragraph 5, it does not want delivered hereunder any fruit other than that complying with the grade and quality for which a price has been specified on the face hereof. Seller therefore should keep all such other fruit out of deliveries. If any such fruit is found in the containers of any delivery mingling with the grade or quality for which a price has been so specified, Buyer may retain the same and pay therefor only $1.00 per ton.

Buyer may grade, at its option, any delivery or partial delivery or portion thereof. In the latter event the grade of the portion shall establish the grade of the delivery.

8. PAYMENT: Payment shall be cash unless otherwise agreed by the parties; and shall be made at such times as they shall agree upon in writing. Failure of Buyer to so pay shall not constitute a breach of contract until Seller makes written demand upon Buyer for payment and Buyer fails to pay for a period of twenty-four (24) hours. Demand shall be deemed made hereunder when Buyer receives written demand by registered letter, through the United States mail, addressed to Buyer at the address on the face of this contract. If Seller makes such demand prior to final delivery, Buyer shall pay interest at six per cent (6%) per annum, beginning thirty (30) days after final delivery, on all sums remaining unpaid on said date.

9. PASSAGE OF TITLE AND DELIVERY: The crops sold hereby shall be identified and title thereto shall pass hereunder to Buyer (1) as to existing crops upon execution hereof and (2) as to non-existing crops as soon as the same come into existence. All risk of loss, depreciation and damage shall remain in Seller until actual delivery to Buyer. It is understood that harvesting will be so arranged that fruit covered by this contract will not be delivered to Buyer on Saturdays, Sundays or legal holidays, except by mutual agreement.

10. WARRANTY OF EXCLUSIVE DELIVERY: Seller shall not deliver or attempt to deliver any fruit grown upon any acreage other than that hereinbefore described and if Seller breaches the provisions of this paragraph, Buyer shall, after notice in writing to Seller, be relieved of any obligation to accept any fruit hereunder, and Seller shall be liable for all damage caused Buyer on account of such breach.

11. CARE OF CROP: Seller shall till, cultivate, fertilize, irrigate and endeavor to eliminate and control pest infestation by spraying or dusting or otherwise using an approved pesticide, all in the manner customary or best adapted to the proper care and growth of the best quality of fruit. Seller warrants that no municipal sludge, sewage or waste water has been applied to lands on which fruit delivered or tendered for delivery has been grown. Buyer's agents are expressly authorized and permitted to enter into and upon Seller's farms and land during the year hereof for the purpose of examining and inspecting the growing crop and the harvesting of same if such be deemed advisable to Buyer to protect its interests. Buyer is not required to give Seller advice relating to the performance of this contract. Such advice as Buyer may give Seller shall be deemed gratuitous and Buyer shall not be liable to Seller therefor.

process. Any commodities that Buyer fails to accept under the terms of this paragraph 13 shall be automatically released for sale and delivery elsewhere by Seller.

14. WAIVER OR CHANGE OF THE TERMS HEREOF: No failure or omission by either party to insist upon or enforce any of the terms of this contract breached by the other shall be deemed a waiver unless the same shall be in writing. No representative or agent of Buyer shall have any authority to waive, change or add to any of the terms or conditions specified herein except by a writing duly executed by said representative or agent.

15. ARBITRATION: Any controversy or claim arising out of or relating to this contract, or the breach thereof (other than the failure or refusal of the Seller to deliver the crop) shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof.

16. GOVERNMENTAL CONTROL OR REGULATION: This contract shall be deemed modified to the extent necessary to comply with State and Federal laws and any order, regulation or license pursuant thereto, and any marketing agreement or order under the authority of law.

17. TIME OF ESSENCE: Time is of the essence of this contract.

18. NOTICES: Except as herein otherwise expressly provided any notice or demand hereunder may be given personally, and shall also be deemed to have been given or made when deposited in the United States mail and registered, addressed to the party to whom directed at his last known address.

19. FAIR LABOR STANDARDS ACT: Seller guarantees that all of the produce subject to this contract was or will be produced in compliance with all applicable requirements of Section 6, 7, and 12 of the Fair Labor Standards Act, as amended, and all regulations and orders of the U.S. Department of Labor issued under Section 14 thereof, and that upon completion of Seller's performance hereunder Seller will promptly deliver to Buyer a written certificate to the effect that such requirements have been complied with.

20. FOOD AND DRUG LAWS AND REGULATIONS: Seller guarantees that no article sold hereunder is or will be adulterated or misbranded within the meaning of any law and governmental regulations, and in particular the Federal Food, Drug and Cosmetic Act of June 25, 1938, as amended, and that no such article will be produced or shipped in violation of Section 404 or 301(d) of said Act.

21. The Equal Opportunity Clauses prescribed by Executive Order 11246, as amended by Executive Orders 11375 and 12086, as implemented in 41 CFR 60-1.4 are incorporated herein by reference.

22. The affirmative action compliance program requirements as set forth in 41 CFR 60-1.40(a) are incorporated herein by reference.

23. The affirmative action clause set forth in 41 CFR 60-250-4, relating to the Affirmative Action Program for Disabled Veterans and Veterans of the Vietnam Era, is incorporated herein by reference.

24. The affirmative action clause set forth in 41 CFR 60-741-4 relating to the Affirmative Action Program for the Handicapped is incorporated herein by reference.

25. The utilization of Small Business and Small Disadvantaged Business Concerns clause prescribed by Public Law 95-507 is incorporated herein by reference.

26. The requirement of the Utilization of Labor Surplus Area Concerns clauses set forth in 41 CFR 1-1.805-3 is incorporated herein by reference.

27. The utilization of Women-Owned Business Concerns clauses as set forth in 41 CFR Chapter 1 are incorporated herein by reference.

DEL MONTE CORPORATION
FRUIT

WASTEWATER TREATMENT PLANTS

Environmental Resources Consultants
Innovative solutions for today's waste management problems

MAR 14 REC'D

March 5, 1996

Delta Protection Commission
P.O. Box 530
Walnut Grove, California 95690

Attn.: Ms. Margit Aramburu, Executive Director

Subject; Location of Delta Wastewater Treatment and Disposal Facilities

The recent notice that the Delta Protection Commission proposes to adopt regulations governing new wastewater treatment and disposal facilities in the Sacramento-San Joaquin Delta raises a number of important questions.

For example, is it the intent of the Commission to limit future recreational development in the Delta's Primary Zone through prohibition of new wastewater treatment facilities? Are facilities such as Rio Vista and Iron House Sanitary District exempt form meeting future water quality objectives? Are wastewater treatment facilities with "zero" discharge similarly exempted for the new regulations? And will the proposed prohibition prevent operators of existing recreational facilities from upgrading and/or expanding their existing wastewater treatment facilities to meet future growth in recreational facilities and/or improvements for water quality purposes?

Operators of several Delta recreational facilities have expressed concern that the regulations, if adopted without proper language clarifying that the Commission's intent is to prevent development in adjacent Delta areas from using the Primary Zone for wastewater utility as well as effluent and biosolids disposal, may ultimately force them to close facilities that can not expand or upgrade wastewater treatment facilities to meet future needs.

Hopefully, these concerns can be addressed in the public review and comment process. If you have any questions regarding this input, please give me a call.

Sincerely,

John T. Bouey, P.E.

Quail Court Office Park, 33 Quail Court, Suite 103, Walnut Creek, CA 94596
Ph 510-937-4050 Fax 510-937-4052

41

JAMES A. GUALCO
ATTORNEY AT LAW
POST OFFICE BUILDING
P. O. BOX 342
WALNUT GROVE, CALIFORNIA 95690
TELEPHONE [916] 776-1727

770 L STREET, SUITE 1440
SACRAMENTO, CA 95814
TELEPHONE [916] 441-0828

March 6, 1996

Attn: Margit Aramburu, Executive Director
Delta Protection Commission
P.O. Box 530
Walnut Grove, CA 95690

Re: Proposed Adoption of Regulation Governing Siting of New Sewage Treatment Facilities in the Primary Zone (Delta)

Dear Ms. Aramburu:

I represent Locke Property Development, Inc., owners of real property upon which the Town of Locke is located and owners of nearby and surrounding real property, a portion of which was rezoned in 1988 to provide for a small subdivision development for residential housing. One of the Conditions of Approval of the project was that new sewage treatment facilities be constructed as approved by the Division of Water Quality, the County Health Department, and Central Valley Regional Water Quality Control Board. The sewage collection systems must be designed to prevent inflow and infiltration and ability to maintain the system must be demonstrated. If a community system is established, an entity responsible for operation and maintenance of the facilities must be identified, and approved by the Board of Supervisors. The latter provision anticipated that the sewage disposal system in the Town of Locke would be updated at that time and incorporated into the facilities servicing the new subdivision, since the Town's system is in a fragile condition. This is covered in another Condition of Approval of the project which states that a revised Report of Waste Discharge Requirements for Locke shall be submitted to the Regional Water Quality Control Board prior to approval of a tentative subdivision map for the housing project.

It would appear that the language of the proposed regulation would preclude construction of these new sewage treatment facilities for the approved subdivision, and for the existing Town of Locke. I do not believe that is the intention of the proposed regulation. Therefore, clarifying language should be included in the regulation excluding the approved subdivision immediately north of Locke, and the Town of Locke itself. Considerable time and money was expended to obtain approval of the subdivision, which approval was based on the belief of the Board of

Supervisors of Sacramento County, and of the community, that the subdivision was beneficial for the greater Walnut Grove community. Now for the Commission to consider adopting a regulation that would interfere with that decision seems to me to be excessively presumptuous on its part.

Further, the proposed regulation prohibiting construction of new sewage treatment facilities in the primary zone appears to be inconsistent with the provisions of Section P-2, Page 11, of the Land Use and Resource Management Plan for the Primary Zone of the Delta adopted February 23, 1995, which provides that new houses built in the Delta agricultural area shall continue to be served by independent potable water and waste water treatment facilities, and that uses which attract a substantial number of people to one area, including any expansion of the Delta communities . . . . shall provide adequate infrastructure improvements or pay to expand existing facilities, and not overburden the existing limited community resources. That is in line with the decision of the Sacramento County Board of Supervisors that a new sewage treatment facility be built for the proposed subdivision and to incorporate the Town of Locke into it. The proposed regulation flies in the face of both the Board's decision and the provisions of Section P-2, although I believe that is not the intent of the regulation as proposed by your body.

Simply excluding the previously approved subdivision, and the Town of Locke, would solve the predicament the proposed regulation, as presented in the above referred to notice, creates.

Very truly yours,

James A. Gualco

JAMES A. GUALCO

JAG/klm

DISAGREEMENT

WASTEWATER RECLAMATION
SOLID WASTE MANAGEMENT

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (310) 699-7411, FAX: (310) 695-6139

CHARLES W. CARRY
Chief Engineer and General Manager

April 3, 1996

APR - 8 REC'D

Ms. Margit Aramburu
Executive Director
Delta Protection Commission
P.O. Box 530
Walnut Grove, CA 95690

Dear Ms. Aramburu:

Proposed Regulation Governing Siting of New Treatment Facilities and Areas For Disposal of Sewage Effluent and Sewage Sludge in the Primary Zone of the Delta

LACSD operates eleven wastewater treatment plants with a combined flow of over 500 million gallons per day. Ten of these produce reclaimed water which is used at 324 sites for purposes including landscape irrigation, recreation, industrial water supply, and groundwater recharge.

The State Wastewater Reclamation Criteria ("Title 22") require a high level of treatment of wastewater to assure that recycled water poses no danger to the public. In particular, the criteria for non-restricted public contact require treatment assuring the reclaimed water is essentially virus free. LACSD's pioneering work on the Pomona Virus Study in the 1970s demonstrated the high level of virus removal achievable by the Title 22 requirements, and LACSD's continued monitoring of its treatment plants continue to demonstrate that effectiveness.

LACSD produces over 9,000 tons per week of biosolids, and more than half of these are recycled via direct application to agricultural land or via composting to produce soil amendment products which are bagged and sold to the public. Application of LACSD's biosolids to agricultural land takes place at four distinct locations in Kern County and Kings County, California and Yuma, Arizona.

I was a member of the national Peer Review Committee which was organized by the Cooperative State Research Service Technical Committee W-170, at the request of U.S.EPA as an integral part of their promulgation of 40 CFR parts 257 and 503, the Standards for the Disposal of Sewage Sludge. EPA's Part 503 regulations were the result of over a decade of development involving an unprecedented effort to assess the risk to public health and the environment from biosolids use or disposal. Risk was assessed via many pathways of exposure, including inhalation, direct ingestion of biosolids amended soil, consumption of crops grown on this soil, and contamination of surface water or groundwater. Potential effects on humans, crops, wildlife, domestic animals and aquatic species were included. This was the first and only regulation promulgated by EPA to take such a thorough approach to risk assessment and management. All

parties involved in the reuse of biosolids from public wastewater treatment plants must meet these rules, which provide a high assurance of safety for public health and the environment wherever such activities take place.

LACSD does not conduct operations in the Delta Primary Zone and has no plans to do so. LACSD is extensively involved in the beneficial reuse of reclaimed water and biosolids, because of the strong citizens' preference in its service area for the environmental benefits of recycling instead of simple disposal. LACSD has made a considerable effort to gain support for such recycling through research of wastewater processes to assure the quality and safety of reclaimed water and biosolids reuse. Extensive efforts are also made to review and comment on regulations of the local, state and federal governments, because the actions of one government agency can often have a strong influence on the actions of other government agencies, as well as on the perceptions of the general public. LACSD is concerned that the Delta Protection Commission has drawn broad conclusions about various risks of using reclaimed water and biosolids without quantifying and comparing them to the existing practices which may pose an equivalent risk, and that Regulation P-3 of the Delta Protection Commission sets an unlawful precedent that an organization of the state may restrict recycling activities based on public opinion instead of science, and promote the conclusion that recycling of reclaimed water or biosolids is somehow less safe or less environmentally acceptable than the normal agricultural practices for which it is a substitute. Such a conclusion could be damaging to LACSD's successful recycling programs which are the product of decades of effort.

Very truly yours,

Charles W. Carry

Robert W. Horvath
Assistant Department Head
Technical Services

RWH:cs

APR - 8 REC'D

EAST BAY
MUNICIPAL UTILITY DISTRICT

MICHAEL J. WALLIS
DIRECTOR OF WASTEWATER

April 4, 1996

Ms. Margit Aramburu
Executive Director
Delta Protection Commission
P.O. Box 530
Walnut Grove, CA 95690

Dear Ms. Aramburu:

Re: Proposed regulation governing siting of new sewage treatment facilities and areas for disposal of sewage effluent and sewage sludge in the primary zone of the Delta

We appreciate the opportunity to comment on the Delta Protection Commission's proposed regulation governing recycled water (sewage effluent) and biosolids (sewage sludge). The East Bay Municipal Utility District (EBMUD) provides drinking water services to 1.2 million people and wastewater treatment services to approximately 650,000 people east of the San Francisco Bay.

EBMUD is committed to recycling and the beneficial use of biosolids and reclaimed water. EBMUD for the last 11 years has operated a biosolids composting facility, and has successfully sold this compost product directly or indirectly to nurseries and home gardeners. Currently, EBMUD land applies its biosolids in Merced County or uses the material for alternatively daily cover at a local landfill through a private contractor.

EBMUD's water reclamation projects include a newly constructed 5.4 million gallon per day water reclamation plant that supplies water to a local refinery for cooling tower makeup, and a joint powers agreement with Dublin San Ramon Services District to jointly pursue water reclamation projects.

The Delta Protection Commission's ban on the use of biosolids and reclaimed water in the primary zone sends a strong message that these products impose an unreasonable risk on the user. This message is not supported by the vast amount of research that has been conducted in this area, and unfairly colors the use of these products throughout California.

Land application of biosolids for use as soil amendments and a fertilizer is centuries old. One of the first written reports of biosolids land application for growing crops was in 1559, in Buzlau Germany. For 70 years Milwaukee has successfully marketed its dried biosolids in nurseries throughout the United States. Currently, one third of the biosolids produced in the U.S. is land applied.

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In recognition of the large and growing use of biosolids and reclaimed water in agriculture, in 1972 the U.S. EPA, U.S. Department of Agriculture, and the National Land Grant Universities created the Coordinating Committee on Environmental Quality; a subcommittee of this group was called "Recycling Municipal Effluents and Sludges on Land." The subcommittee's goal was to coordinate U.S. EPA-USDA-University resources to provide a research, development, and demonstration program for biosolids and reclaimed water use projects. This program was one of the first of many research efforts in the 1970's and 1980's to ascertain the impact of biosolids management and disposal on public health and the environment. Recently, a researcher reported " a casual search of AGRICOLA, a computer-based literature database for agriculture research and development, yielded more than 2300 biosolids-related technical articles."

The biosolids research efforts of the 70's and 80's culminated in the EPA's proposal, on February 6, 1989, of their 40 CFR Part 503 Standards for the Management and Disposal of Sewage Sludge (the 503's), which has been acknowledged as the most comprehensive, technically based biosolids regulation in the world. The 503's are risk-based regulations that considered 14 different environmental pathways through which contaminants in biosolids applied to agricultural land are transported to the most exposed individuals (MEI). These pathways are as follows:

	PATHWAY	**PATHWAY MEI**
3.	Biosolids-Soil-Human	Child eating undiluted biosolids daily for 5 yrs
4.	Biosolids-Soil-Plant-Animal-Human	Human farmer
5.	Biosolids-Soil-Animal-Human	Human farmer
6.	Biosolids-Soil-Plant-Animal	Livestock most sensitive to contaminant
7.	Biosolids-Soil-Animal	" " " "
8.	Biosolids-Soil-Plant	Food crop most sensitive to contaminant
11.	Biosolids-Soil-Airborne Dust-Human	Tractor operator at land application site
13.	Biosolids-Soil-Air-Human	Human living on land application site, breathing fumes
14.	Biosolids-Soil-Groundwater-Human	Human drinking groundwater from land application site

In addition to the risk analysis, the EPA conducted a "National Sewage Sludge Survey" (NSSS). The data collection effort was conducted from August 1988 through September 1989, and included data from 479 publicly owned treatment works (POTW) with secondary treatment facilities throughout the U.S. As part of this survey, the EPA also collected and analyzed sludges/biosolids from 181 of the POTW's for 419 pollutants. Many of these pollutants were undetected in the samples, infrequently detected, or present at levels below the detection limit. The NSSS supported the EPA's risk assessment work.

The EPA held a 183-day public comment period of the 503 Regulations beginning on February 6, 1989. The EPA also worked with two peer review groups to review in detail the scientific and technical basis of the proposed rule. One group reviewed the land practices part of the rule and the other group reviewed the incineration part of the rule. The Land Practices Review Committee included many nationally known experts on biosolids use and disposal, including several members of the U.S. Department of Agriculture, and represented a broad diversity of views. A representative of the Natural Resources Defense Council also served on this committee. A final report from this committee was submitted to EPA on July 24, 1989. The EPA also received 5,500 pages of comments from 656 commentators on the 503's during the EPA's public comment period.

On November 9, 1990, the EPA provided a 60-day public comment period to review changes made to the 503 Regulations since the 183-day public comment period. The EPA also provided public notice of the availability of the NSSS results. During this comment period the EPA received 1,000 pages of comments from 153 commentators. Many of the comments supported EPA's changes to the Regulation. EPA's final 503 Regulations were published in the Federal Register on February 19, 1993, and took effect on March 22, 1993.

The EPA's 503 Regulations are technically based, and went through a long and complex process, including an extensive public comment period, before they were published in final form. The Delta Protection Commission's ban of biosolids and reclaimed water use in the Delta's Primary Zone can result in a public perception of these products that can have a statewide effect.

Sincerely,

David R. Williams

DAVID R. WILLIAMS
Manager of Support Services

DRW:DMG:cih

CALIFORNIA ASSOCIATION of SANITATION AGENCIES

925 L Street, Suite 1400 Sacramento, CA 95814 TEL: (916) 446-0388 – FAX: (916) 448-4808

APR - 5 REC'D

April 4, 1996

Ms. Margit Aramburu
Executive Director
Delta Protection Commission
P.O. Box 530
Walnut Grove, CA 95690

Dear Ms. Aramburu:

SUBJECT: **PROPOSED REGULATION GOVERNING SITING OF NEW SEWAGE TREATMENT FACILITIES AND AREAS FOR DISPOSAL OF SEWAGE EFFLUENT AND SEWAGE SLUDGE IN THE PRIMARY ZONE OF THE DELTA**

Thank you for the opportunity to comment on the Delta Protection Commission's proposed regulation governing recycled water (sewage effluent) and biosolids (sewage sludge). The California Association of Sanitation Agencies (CASA) is a statewide non-profit association representing the water pollution control community. Our 86 member agencies provide wastewater treatment, water recycling and biosolids services to more than 15 million Californians.

CASA urges the Commission to reconsider the proposed regulation, which would ban the beneficial reuse of recycled water and biosolids. We support the Commission's goal of protecting the Delta and its unique resources. However, the proposed regulation is not necessary to achieve this goal and is in direct conflict with existing state laws and policies governing reclaimed water and biosolids use.

Recycled water and biosolids are environmentally sound practices which are already extensively regulated at the federal, state and local level. Both recycled water and biosolids which meet state and federal quality standards are compatible with agriculture when properly managed. Any special conditions or limitations on use required by the Delta's unique hydrology, soils or other features can be dealt with via the existing permitting processes of the State and regional water quality control boards and local enforcement agencies. The proposed regulation, however, would ban all use of these products despite the lack of any scientific basis to support a total prohibition.

The proposed ban is not only unnecessary and without scientific justification, but it also conflicts with existing law. Section 13550 of the Water Code requires that recycled water be used whenever it is safe, available and economical. The Commission's enabling act expressly provides that "to the extent of any conflict or inconsistency between this division and any provision of the Water Code, the provisions of the Water Code shall prevail." (§ 29715 of the Delta Protection Act.) Further, the enabling legislation states that the Commission is not authorized to exercise jurisdiction over matters within the jurisdiction of other state agencies. (§29716 of the Delta Protection Act.) Biosolids and reclaimed water are extensively regulated by the State Water Resources Control Board, the Department of Health Services, the California Integrated Waste Management Board and the Department of Food and Agriculture, as well as the United States Environmental Protection Agency.

In addition, the proposed regulation lacks clarity. The wording of the proposed regulation refers to "disposal" of effluent and sewage sludge. It is unclear whether this governs only true disposal or includes beneficial reuse. We believe it is crucial to separate disposal from beneficial reuse, as the two are governed by very different requirements and have very different impacts.

The safety, reliability and benefits of recycled water and biosolids have been extensively chronicled by the U.S. EPA, the National Research Council, the Water Environment Federation, academics and scientists. The enclosed issue paper, prepared by Tri-TAC and previously submitted to the Commission, provides a summary of the state of research regarding biosolids and reclaimed water. Also attached are letters from CASA member agencies which include additional information regarding reuse of these resources. We hope that the Commission will review this information and reconsider its proposed regulation to prohibit all use of recycled water and biosolids. CASA supports the reasonable and legitimate regulation of biosolids and recycled water, but the proposed outright prohibition on any use, at any time, at any location, simply goes too far.

Sincerely,

Roberta Larson

Roberta Larson
Director of Regulatory Affairs

50

cc: Peggy Sartor, Chair, CASA Regulatory Committee
Don Gabb, Chair, CASA Land Subcommittee
Rich Luthy, Chair, Tri-TAC
Kent Alm, Sellar Hazard, et al
Craig Johns, Crosby, Heafy, et al.

APR - 8 REC'D

Wheelabrator Water Technologies Inc.

Bio Gro Division
A WMX Technologies Company
Western Region
19600 Fairchild, Suite 120
Irvine, CA 92715

Tel. 714.476.4080
Fax 714.476.8614

8 April, 1996

Margit Aramburu
Executive Director
Delta Protection Commission
14215 River Road
P.O. Box 530
Walnut Grove, CA 95690

Dear Ms Aramburu:

The Bio Gro Division of Wheelabrator Water Technologies submits these comments in response to the Staff Report and Environmental Analysis dated February 23, 1996. In addition, comments are already submitted through our attorney's office of Crosby, Heafy, Roach & May which address legal issues, and the CEQA analysis in greater depth. Bio Gro supports the mission of the Delta Protection Commission, but the P-3 section does not address the actual use of biosolids as a fertilizing material.

It appears that the distinction between disposal of sewage sludge at dedicated sites and land application of biosolids at agronomic rates still is unclear to the Commission. When biosolids are used as part of a farmer's fertilization program, it is not considered disposal. The agronomic application of biosolids regulates this fertilizer application to the nitrogen needs of the crop. Therefore, there is no nitrate contamination since the plants utilize all available nitrogen. This is an optional program, one which provides farmers with another fertilizer and soil amendment alternative. It is also a cost effect option. Most biosolids application programs do not charge the farmer for the product directly, rather the farmer provides an extra window of time in which to apply and incorporate the material.

In order to protect public health, and the environment biosolids applications are regulated at the federal, state and local levels. The U.S. EPA regulates biosolids through the 40CFR 503 section of the Clean Water Act. They are based on over 30 years of scientific information. The 503 regulations included risk assessment based on 14 pathways of metal toxicity (pamphlet enclosed) in addition to strict restrictions on planting and harvesting based on pathogen risk. The EPA relied on scientific research and information to develop the regulatory limits. The material leaving the treatment plants must meet these strict requirements. No other fertilizing material or soil amendment has gone through this extensive process. While these regulations take health and safety as well as environmental protection into account, they also allow for enforcement at the state and local levels.

The staff report does not review the nature of the regulations pertaining to agricultural use of biosolids in California. Biosolids applications are regulated on the state level in order to address specific regional considerations. The Regional Water Quality Control Boards regulate biosolids application in order to protect groundwater quality, as well as public health and safety. In the Delta region, the Central Valley Regional Water Quality Control Board (CVRWQCB) is responsible for protecting water quality. Each site is reviewed to ensure that it meets additional buffer zones, depth to groundwater and other mitigations. A CEQA review of this process is required. In addition, the Department of Food & Agriculture regulates biosolids as a fertilizing material. This licence is mandated for all bulk applications of biosolids.

Finally, counties also have the ability to regulate the land application of biosolids. Of the five counties comprising the Primary Zone of the Delta, all either have a regulatory mechanism in place or are developing one. These local communities can provide local enforcement protections. The status of county ordinances pertaining to the land application of biosolids as agricultural soil amendments or fertilizers at agronomic rates is unclear in the staff report. Currently, there are no counties that ban biosolids applications at agronomic rates. Merced County, for example, has an ordinance in place and Stanislaus County is still in the process of developing an ordinance. Bio Gro encourages local enforcement processes, but we cannot support full bans on biosolids applications.

The Primary Zone of the Delta is unique, and varied ecosystem environment. Some areas are comprised of peat soils with artificial groundwater levels in order to grow vegetable crops. Thee areas would not be approved for biosolids application under current requirements by the CVRWQCB. Other areas have greater depth to groundwater, rolling hills and are used primarily for irrigated pasture and feed crops for animals. A ban of biosolids use in the primary zone does not take this variety into account. Nor does it take into account the positive affects of biosolids on the environment and agriculture - a source of organic matter and micronutrients.

1. Soils and Hydrology

The unique soil conditions in portions of the Primary Zone do not necessitate a ban on biosolids application. The majority of farmland in the state is located on 100 year flood zones, where the alluvial soils are most fertile. There are specific requirements set forth by the Regional Water Quality Control Board mandating consideration of groundwater. Pathogens do not migrate "up to 60 feet" when biosolids are applied to the soil. In fact, the inferred reference in the staff report to Dr. Gerba's research was misinterpreted. Dr. Gerba specifically states that "only very limited movement of viruses from land applied biosolids has been observed." (letter enclosed)

The discussion of the regulatory environment related to biosolids application is incomplete. The discussion of the EPA regulations does not review the extensive research that went into the development of the regulation. The EPA regulations make a distinction between disposal at dedicated sites and the agronomic application of biosolids. Furthermore, the EPA established specific metal loading limits, and restrictions on waiting periods for public access and crops that have the potential to touch the soil surface. The vegetable row crops grown in the Primary Zone would not be approved for land application.

In addition, the staff report neglects the additional regulations imposed by state and local entities in California. As previously discussed, the Central Valley Regional Water Quality Control Board specifically addresses land application of biosolids and the unique conditions of this region. Each site must meet stringent mitigation requirements. Biosolids applications are the only fertilizing material that is covered by this type of permit protecting groundwater in this region. Therefore, the characteristics of this material and site conditions are incorporated into mitigation requirements.

2. Unique Delta Wetlands Ecosystem

The water quality of the Delta is protected through the Central Valley Regional Water Quality Control Board. As the agency charged with ground and surface water protection, their regulations and approval process ensures that the water quality is protected from "the potential escape or release" of biosolids from land application projects. In addition, in a study comparing the runoff capacity of manure, commercial fertilizer and biosolids. Biosolids applications are the least likely to leaver the site. Additional buffer zones imposed by the CVRWQCB protect the environment even further. Biosolids application at agronomic rates is not a discharge to the Delta. Rather, it is a closely controlled and monitored fertilization practice for agriculture.

3. Potential Adverse Impacts on Delta Agricultural Lands

The discussion of adverse impacts on Delta Agricultural lands is not unique to biosolids. As mentioned in previous sections, biosolids applications are more highly regulated and monitored than other fertilizer applications in the Delta, including manures and commercial fertilizers. The metal levels in biosolids are specifically determined to protect human health and the environment in the short and long term. These "metals" are also found and required in agricultural soils as well as other fertilizer sources. The same is true for salts. If protection of the Delta waters is the issue, then all fertilizing materials should be scrutinized in the same manner.

The use of biosolids on agricultural land is an optional practice; it is one more fertilizer and organic amendment option for the farmer. Farmers are aware of issues pertaining to food processing restrictions and can chose to use biosolids. Additionally, many crops cannot use biosolids because of waiting periods discussed earlier. The implementation of bans, such as this one proposed by the Delta Protection Commission enforces the perception that biosolids are not an acceptable fertilizing material. It is not the biosolids, but rather the perception of their harm that causes the real adverse impact to agriculture, and the environment of the Delta.

4. Wildlife Habitat on Agricultural Lands

The use of biosolids on agricultural lands does not adversely affect wildlife habitat. In fact, biosolids are used to create new wetlands because of their high degree of organic matter.

The areas of the Primary Zone that would actually be approved for land application of biosolids at agronomic rates are not the areas that will be converted to reservoirs or wetland habitat areas in the near future. They are not located on peat soils.

CEQA Analysis

The two exceptions described to the proposed amendemnt described in this section point ot the contraradictory nature of this regulation. "These approved projects are both located in the extreme western areas of the Delta and thus would not release materials into critical aquatic habitats or drinking water sources located in the central Delta Primary Zone." These projects are located in the Primary Zone of the Delta. This statement recognizes that the Primary Zone of the Delta is not homogeneous. The land that is most applicable for land application of biosolids at agronomic rates is in this same vicinity. And, land application is consistent with the Delta Protection Act goal of support for agricultural practice. In fact, this land application would be conducted as a benefit to farmland in productive agricultural without being converted to another land use.

The agronomic use of biosolids is incorporated into the farmers' entire fertilization program. It is highly monitored by federal (U.S. EPA), state (Regional Water Quality Control Board, Department of Food & Agriculture), and local entities. This application is not a land use issue, but rather an agricultural application. All of these monitoring procedures are currently in place.

The agricultural practice of applying fertilizers at required rates depending on soil and crop growth does not change when biosolids are incorporated. Agricultural land managers use biosolids for fertilizer and organic matter value. It is a cost effective option for agriculture, because there is no monetary charge for the material. This is not because the material does not have value. Rather, the grower does donate time and coordination to the effort to accomodate equipment and scheduling windows.

Conclusion

Biosolids are a safe and effective fertilizer source for agriculture in specific sections of the Delta Primary Zone. This agricultural practice is regulated on the federal, state and local levels. These regulations restrict applications to protect human health and the environment, including groundwater concerns. Bio Gro strongly supports the Delta Protection Act, and protection of agricultural uses in the Delta. The ban on biosolids applications at agronomic rates, however, conflicts with the intention of the act.

There are a number of farmers who continue to demonstrate interest in our program in the Primary Zone of the Delta. The majority of the land that is signed up for land application is in irrigated pasture. It is located in the western section of the primary zone; none of the soils are peat soils. If you have any questions, or require further information please do not hesitate to contact me at 714/476-4080. Thank you for your consideration of our comments.

Sincerely,

Linda Novick
Technical Services Coordinator

enclosures:

cc: M. Taylor, WWT/Bio Gro

CITY OF STOCKTON

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APR - 1 RECD

March 29, 1996

Margit Aramburu
Executive Director
Delta Protection Commission
14215 River Road
Walnut Grove, CA 95690

NOTICE OF PROPOSED ADOPTION OF REGULATIONS GOVERNING SITING OF NEW SEWAGE TREATMENT FACILITIES AND AREAS OF DISPOSAL OF SEWAGE EFFLUENT AND SEWAGE SLUDGE IN THE PRIMARY ZONE OF THE SACRAMENTO-SAN JOAQUIN DELTA

(Response to your notice dated February 23, 1996)

The City administrative staff is of the opinion that the proposed regulation conflicts with existing Federal and State regulations and policies regarding recycled water and reuse of biosolids. The City administration therefore urges the Commission not to adopt the proposed Section 20030 in Chapter 3 of Title 14, California Code of Regulations. This is the second time this action has been considered by the Commission. The first time the regulations were adopted, the Commission did not comply with the Administrative Procedures Act in promulgating these provisions, and the regulations had to be rescinded. Even though the Commission has instituted the proper procedures in this instance for promulgating the proposed regulations, there are many additional reasons why this proposed code section should not be adopted.

Existing Regulations

If this proposed wording is adopted, the Commission will be ignoring the fact that recycled water and biosolids are a valuable commodity which can help to improve the economy and environment of the Primary Zone. Voluminous regulations for the use of recycled wastewater and biosolids have already been implemented by the State and Federal government to protect the public and the environment. Use of recycled water and reuse of biosolids in agriculture have been proven to be safe from a public health standpoint by scientific studies conducted over long periods of time.

The State of California enacted legislation in 1991 which amended Water Code Section 13575, by enacting the Water Recycling Act. There are seven declarations in the Act, including the need for reliable sources of nonpotable water to protect investments in agriculture, greenbelt areas, and recreation. Additionally, the fourth declaration states that the environmental benefits of recycled water include a reduced demand for potable water in the Sacramento-San Joaquin Delta, which is otherwise needed to maintain water quality.

Some other Water Code information relative to recycled water is as follows:

Division 1, Chapter 1, Section 100:

> "...because of conditions prevailing in the State, the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use of water be prevented..."

Division 1, Chapter 2.5, Article 3, Section 275:

> "The department and board shall take all appropriate proceedings or actions before executive, legislative or judicial agencies to prevent waste, (or) unreasonable use ... of water in this State."

Division 1, Chapter 6, Article 2, Section 461:

> "It is hereby declared that the primary interest of the people of the State in the conservation of all water resources requires the maximum reuse of wastewater in the satisfaction of requirements for beneficial uses of water."

Division 7, Chapter 7, Article 7, Section 13550:

> "The Legislature hereby finds and declares that the use of potable domestic water for the irrigation of greenbelt areas, including but not limited to cemeteries, golf courses, parks and highways landscaped areas, is a waste or an unreasonable use of such water when reclaimed water is available."

Division 7, Chapter 7, Article 7, Section 13551:

> "A person or a public agency, including a State agency, city, county, district, or any other political subdivision of the State, shall not use water from any source of quality suitable for potable domestic use for the irrigation of greenbelt areas when suitable reclaimed water is available."

The above sections from the Water Code reflect a general State policy requiring the most efficient use of all available water resources, including recycling.

Sewage Effluent and Sewage Sludge

In reference to reuse of biosolids, Federal and State law both permit and encourage the beneficial reuse of biosolids on agricultural land when certain criteria are met. It should be recognized that any attempt by the Commission to prohibit the beneficial reuse of biosolids on agricultural land in the Delta Primary Zone is in conflict with existing law. Should the Commission adopt this proposed prohibition, the issue will be raised whether the Commission's power over local land use matters via the planning process can preempt either State or Federal legislation.

The notice describes at the bottom of page 2 that the proposed regulation would better protect natural resources, including soils, water, wildlife habitat, and wildlife, by protecting them from inappropriate and incompatible land uses as an integral part of the Commission's planning program. This paragraph is relating to the disposal of sewage byproducts on the Delta's Primary Zone.

At the top of page 3, the paragraph points out that 40 Code of Federal Regulations, Part 503, regulates the use and disposal of sewage effluent and sewage sludge on the lands of the United States. The second sentence states that these Federal regulations are not comparable to the Commission's proposed regulation. Actually, the proposed regulations constitute a ban on the use of sewage byproducts in the Delta Primary Zone, which contradicts State and Federal regulations which permit such use.

Missing in the Commission's background material describing the proposed action is a discussion which provides an overall understanding of sewage, sludge, and the wastewater treatment and reclamation process. Sewage effluent, as used in the regulations, is a misnomer. Sewage is the raw material that is transmitted to a wastewater treatment plant. Effluent is the finished product that is discharged in accordance with a permit issued by the Regional Water Quality Control Board. This effluent bears no relationship to raw sewage. Sewage should not be used in any long-term resource management plan. It is specifically the reason why wastewater treatment processes are established, i.e., to properly treat and reclaim this sewage.

The solids are removed as wastewater moves through the treatment process and are digested. Once this product has been completely digested, and tested in accordance with Federal and State regulations, it is free of biological and chemical constituents of concern and is ready for beneficial reuse. At this point, it becomes a byproduct of wastewater treatment called biosolids.

Neither the liquid nor solids should be called sewage after the treatment process. They should properly be termed recycled water and biosolids. Biosolids and recycled water are currently used extensively throughout the United States, and have been proven to be safe for human health and the environment. The safety of these two processed products is achieved through treatment, laboratory testing, compliance with regulations, and regulatory oversight, including management practices.

The ability to market recycled water and biosolids is closely linked to public perception. Overcoming aversions and emotional fear of byproducts resulting from wastewater treatment is often the key to establishing successful recycling programs, and it is essential that any unfounded bias against these products be eliminated. Use of the word "sewage effluent" continues the confusion to the general public. Regulators and policy makers must take the lead in promoting recycling through responsible actions, not contribute to misperceptions.

Conclusion

The use of recycled water and biosolids is safe and is protective of human health and the environment. Imposition of a ban on the use of biosolids and recycled water is not necessary to meet the objectives of the Delta Protection Act and is not consistent with existing Federal and State law. A prime objective of the Act is to preserve agricultural use and prevent land use changes which would displace agriculture. This objective is clearly not threatened by using biosolids or recycled water. Use of these products is compatible with agriculture and is in fact dependent on agriculture. Recycled water simply provides a source of nonpotable water for crops, and biosolids provide nutrients and return organic matter to soils.

Use of recycled water and biosolids are environmentally safe, beneficial and essential for California's farm economy. Unfortunately, an unfounded bias against byproducts resulting from wastewater treatment is often an impediment to the success of these programs. Public education and the correct use of terminology is essential. As responsible citizens, regulators and policy makers, we must act on scientific information, and avoid perpetuating myths about these products.

Thank you for the opportunity to comment on the proposed regulations. Should you have any questions, please feel free to contact John Carlson, Community Development Director, at (209) 937-8444.

DWANE MILNES
CITY MANAGER

DM:gp

cc: City Council
City Attorney
Assistant City Manager
Municipal Utilities Department
Community Development Department

LEGAL/TECHNICAL

CITY OF LODI

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March 21, 1996

Delta Protection Commission
Attention: Margit Aramburu, Executive Director
P.O. Box 530
Walnut Grove, CA 95690

Subject: Proposed Regulation Governing Siting of New Treatment Facilities and Areas For Disposal of Effluent.

The City of Lodi has the following comment about the proposed regulation governing siting of new treatment facilities and areas of disposal of effluent.

The proposed regulations contain a note at the end of the second paragraph intended to define disposal of effluent. The note states, "disposal includes discharge". This statement implies the commission can prohibit new or increased discharges to the Primary Zone.

The City of Lodi believes regulating effluent discharges is outside the scope of the commission's primary mission to protect land within the Primary Zone. We therefore request this phrase be removed from the proposed regulation.

If you have any questions regarding this comment, please contact either Fran Forkas at (209) 333-6740, or Del Kerlin at (209) 333-6869.

Jack L. Ronsko
Public Works Director

JLR/DK/FF/yc

cc: Water/Wastewater Superintendent
Assistant Wastewater Treatment Superintendent

(61)

MARAMB.DOC

PCL

PLANNING AND CONSERVATION LEAGUE

APR - 2 RECD

April 1, 1996

Margit Aramburu
Delta Protection Commission

Dear Margit and Commissioners:

The following are the comments of the Planning and Conservation League on the Staff Report and Environmental Analysis for Proposed Amendment to the Land Use and Resource Management Plan for the Primary Zone of the Delta, and Adoption of Regulation Governing Siting of New Sewage Treatment Facilities and Areas for Disposal of Sewage Effluent and Sewage Sludge in the Primary Zone of the Delta.

First, we question the authority of the Commission to adopt these regulations. As a principal sponsor of the Delta Protection Act, we doubt that the Commission has the authority to so closely regulate farming practices in the Delta. The Commission sites PRC 29760 as the basis for this authority, but this section only would provide that authority if agricultural, water quality, and habitat damage can be shown to occur with the use of recycled wastewater or biosolids. This report certainly does not show such damage.

The Commission proposes to interfere in the rights of Delta landowners to contract to obtain fertilizer (land recycling of effluent and solids) because of supposed concern about the effect of use of this material on groundwater and soil quality. Such interference must be justified by good science, undertaken or independently reviewed by the Commission, and not simply hearsay evidence submitted by those with an economic interest in banning wastewater and biosolids recycling.

The Commission has done no independent studies of this question, and proposes to reject the analysis by the US Environmental Protection Agency and state agencies such as the state and regional water quality control boards. If the Commission believes that stronger regulations are needed for the Delta, then a study should be done of just what standards are needed, and the justification for such standards should be made

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available for public review and comment.

It is virtually inconceivable that an independent study would justify a complete ban on the use of effluent and biosolids in the Delta. We are willing to review reasonable standards, but a complete ban is not based on science. Apparently, it simply gives in to political pressure.

Regulation text If wastewater discharge and the use of biosolids are so bad, why the exemptions for the Rio Vista and Ironhouse projects? The justification provided is geographical, and not based on science. Probably the exemption is to avoid forcing local agencies to change their plans. This is not enough of a reason: some scientific justification is required for these exemptions.

Plan Amendment We question whether Merced and Stanislaus Counties have in fact taken the same action proposed here. Staff should have included copies of the ordinances if such ordinances actually exist.

Issues

1. Soils and Hydrology. No one disputes that Delta islands may flood. We also agree that high groundwater levels exist in some parts of the Delta. But an independent analysis is needed to demonstrate that recycling wastewater and biosolids in the Delta poses a serious threat to the waters of the state. Island flooding is relatively infrequent, and regulations could be adopted to take such flooding into account by limiting the amount of recycling allowed so that pathogens and nutrients from these practices are never present in large enough quantities to threaten Delta water quality. No evidence about impairment of soil productivity or the environment (other than water quality) is even discussed.

2. Wetlands. No evidence of potential damage to wetlands is provided.

Drinking water quality is also discussed. Since the otherwise recycled wastewater would probably be discharged directly into the Sacramento or San Joaquin Rivers, it is hard to imagine that use of the water on islands would be more harmful. Possible discharge of biosolids is discussed above.

It would be appropriate for the Central Valley Regional Water Quality Control Board to regulate these practices, given their expertise. It is not appropriate for the Commission to simply prohibit them.

3. Delta Agricultural Lands. No evidence is presented that the proposed pattern of use of wastewater or biosolids would result in the speculative damage that is discussed.

It is always possible to do things wrong. This is why we

have government regulation. But the Commission is not proposing to prohibit tractor farming in the Delta, despite its effects on soil compaction and exposing soils to microbial decomposition. Regulation is appropriate, prohibition is not.

4. Wildlife Habitat. This discussion is not relevant to the question at hand. No evidence that wetlands will be reduced by these practices is presented, nor is evidence of damage to wildlife due to soil contamination presented.

CEQA Analysis

In addition to questioning the authority the Commission has in adopting this regulation, PCL believes that your agency has completely failed to comply with the requirements of the California Environmental Quality Act (CEQA) (commencing with section 21000 of the Public Resources Code).

Your staff report and alleged environmental analysis claims that "the Commission has adopted regulations which allow the Commission to use its environmental documents in lieu of preparing negative declarations or environmental impact reports" (EIRs). Your agency has no authority under CEQA to adopt regulations that allow the agency to use "its environmental documents in lieu of" CEQA's mandated environmental review proceedings. Nowhere in section 15251 of the CEQA Guidelines is your agency listed as an agency with a certified regulatory program that exempts your agency from the preparation of an initial study, negative declaration, or EIR. Without this designation by the Resources Agency Secretary or a legislative exemption from CEQA, the Commission has no authority to bypass the requirements of CEQA.

The Legislature has provided no CEQA exemption within the Delta Protection Act. Within CEQA only the "activities and approvals by a local government necessary for the preparation of general plan amendments" pursuant to the Delta Protection Act are exempt from CEQA. (Pub. Resources Code, § 21080.22, subd. (a).) CEQA explicitly states "that the approval of general plan amendments by the Delta Protection Commission is subject to the requirements of [CEQA]." (Pub. Resources Code, § 21080.22. subd. (a).) There is no exemption for any Commission-proposed amendment to the regional plan, which is the subject matter of this action. There does not appear to be any authority for the "in lieu" process that your agency is undertaking.

If you are to proceed with this amendment to the regional plan, CEQA demands that you prepare an initial study, unless: (1) your agency's regulatory activity is categorically exempt from CEQA; or, (2) the regulatory activity "can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (CEQA Guidelines,

§ 15082.) By preparing an "in lieu" environmental review document, although there is no authority for this in lieu document, your agency has necessarily determined that the regulatory activity is subject to CEQA. Thus, you must prepare an initial study in compliance with section 15063 of the CEQA Guidelines.

Because you were creating your own "in lieu" environmental review process, your agency has failed to prepare the required initial study. Furthermore, since there is no discussion in your staff report, PCL assumes that you also failed to consult with "all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the [regulatory activity]." (Pub. Resources Code, § 21080.3.)

Although your agency concludes there "are no discernible adverse environmental impacts associated with adoption of the regulation and Plan amendment," your agency has failed to circulate this negative declaration and initial study and post the mandated public notice informing the public of the 30-day review and comment period. (Pub. Resources Code, §§ 21091, subd. (b), 21092; CEQA Guidelines, §§ 15072, 15073.) Since the Commission is a state agency, the notice must be filed with the State Clearinghouse for review by other state responsible agencies. There is nothing in your staff report that suggests that CEQA's public notice requirements have been met prior to your circulation of your conclusory and invalid "in lieu" document.

"If there is substantial evidence in light of the whole record before the [Commission] that the [regulation and plan amendment] may have a significant effect on the environment, an ~~[EIR] shall be prepared." (Pub. Resources Code, § 21080, subd.~~ (d).) PCL believes the Commission's proposed regulation and plan amendment may cause the following significant adverse environmental impacts -- triggering the preparation of an EIR on your agency's proposed action.

(1) The regulation may result in water quality degradation and soil contamination in other areas of the state. Recently published documents by the State Water Resources Control Board and other agencies indicate that the vast majority of landfills in California are leaking. Disposal of sewage sludge to these landfills will exacerbate this problem.

Pursuant to subdivision (f) of Appendix G, any project that will substantially degrade water quality is assumed to have a significant effect on the environment. (CEQA Guidelines, Appendix G, subd, (f).) More importantly your proposed regulation has the potential to substantially degrade the quality of the environment and reduce habitat of fish and wildlife species caused by the continued discharge of wastewater in the

Sacramento-San Joaquin Delta and the disposal of biosolids on land.

Sacramento County has disposed of its sludge on land near the sewage treatment plant for several years, and has found that this type of high intensity disposal cannot be continued. They are being forced to seek other disposal sites. Obviously disposal through agronomic methods would reduce the environmental impact of the current disposal method.

Similarly, great concern was expressed by the State Water Project Contractors and others about the possible harmful effects of the discharge of wastewater by the City of West Sacramento (both from existing and proposed new wastewater treatment plants). Prohibiting this discharge onto Delta lands could result in serious water quality problems in the Sacramento River and the Delta.

Pursuant to CEQA and CEQA Guidelines this type of environmental impact is per se significant triggering the requirement for an EIR prior to the adoption of your agency's proposed regulation or plan amendment. (Pub. Resources Code, § 21083, subds. (a) - (c); CEQA Guidelines, § 15065, subd. (a).)

(2) Restricting alternative methods of recycling bio-solids will interfere with the affected jurisdictions within the Delta from complying with requirements of the California Integrated Waste Management Act (commencing with section 40000 of the Public Resources Code). This conflict with adopted state policy and local integrated waste management plans is presumed to be a significant adverse effect on the environment. (CEQA Guidelines, Appendix G, subd. (a).)

Based upon this evidence of potential significant adverse impacts on the environment, the Commission must prepare an EIR prior to adopting the proposed regulation and plan amendment.

Finally, we make a public records act request for all correspondence and notes from meetings between Commission staff and any person representing or having an ownership interest in waste disposal sites. We specifically request copies of all correspondence and meeting notes between the Commission, its staff, and Dante John Nomellini.

We also would like to know what role Mr. Nomellini played in helping to prepare the Commission report. Finally, please list those publications listed under "References" which were not among those submitted by Mr. Nomellini.

sincerely,

Jerry Meral

Gerald H. Meral
Executive Director

(6d6)

CALIFORNIA TRADE AND COMMERCE AGENCY

REGULATION REVIEW COMMENTS

Pete Wilson
Governor

Julie Meier Wright
Secretary

APR - 8 REC'D

April 8, 1996

Delta Protection Commission
14215 River Road
PO Box 530
Walnut Grove, CA 95690

Attention: Margit Aramburu

Subject: Proposed Adoption of a Regulation in Title 14 Related to Treatment Facilities and Disposal of Sewage Effluent and Sludge (OAL *Notice* File #Z96-0213-03)

Under the authority granted by Government Code section 15363.6, the California Trade and Commerce Agency Regulation Review Unit (RRU) has completed a review of the subject regulation and is submitting the following comments to be included in the rulemaking file.

The Delta Protection Act of 1992, which created the Delta Protection Commission (DPC), requires DPC to adopt a comprehensive long-term resource management plan for designated lands within the Sacramento-San Joaquin Delta. The proposed regulation would establish a land use policy to be adopted and implemented by local governments in the Primary Zone of the Delta. The effect of the regulation would be to preclude construction of new treatment facilities and placement of sewage effluent and/or sewage sludge in the Zone.

Economic Impacts

California Rulemaking Law (Government Code section 11346.3) specifies that state agencies proposing to adopt or amend any administrative regulation shall assess the potential for adverse impact on California business enterprises and individuals.

The DPC staff report dated February 23, 1996, is an environmental analysis and provides only a limited qualitative assessment of potential economic impacts. The lack of such information makes it difficult to evaluate alternatives and consider whether there is a less costly alternative or combination of alternatives that would be equally as effective.

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Economic impacts on businesses need to be evaluated in addition to assessing environmental impacts. If the current practice of utilizing sewage effluent in the Delta is discontinued, what would be the cost to farmers, haulers, treatment plants and other businesses? To what extent can economic benefits such as additional plantings of vegetable crops or increasing the fish population or enhanced recreational activities be quantified?

There are numerous other businesses and/or activities that could be either negatively or positively impacted by the proposed regulation. Some examples are: restaurants, houseboat rentals, marinas, water skiers, recreation and commercial fishing, and pleasure boating. The economic impacts to these industries and activities also need to be addressed.

The Initial Statement of Reasons must contain "Facts, evidence, documents, testimony, or other evidence upon which the agency relies to support a finding that the action will not have a significant adverse impact on business." [Government Code section 11346.2(b)(5)] This supporting information was not included in the ISOR prepared by DPC. Such information should be included in the Final Statement of Reasons (FSOR) for the proposed regulation, and any alternative approached submitted to DPC during the public comment period.

Alternatives

It is not clear from the rulemaking file whether other alternatives would be as effective and less burdensome to affected parties than the proposed regulation. The DPC staff report for the regulation, dated February 23, 1996, suggested two alternatives that RRU believes should be addressed more fully by the DPC in the FSOR. One alternative would be to not adopt the proposed regulation. This approach would allow existing Federal regulations, and local regulations, to govern the use and disposal of sewage effluent and sewage sludge. The second alternative would allow the placement of effluent and sludge, and the location of new treatment plants, in the least sensitive areas of the Zone.

In accordance with Government Code section 11346.9(a)(4), the FSOR must contain a determination by the DPC, with supporting information, regarding these alternatives. The DPC must determine that "no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected parties...."

Since the proposed regulation would affect small businesses, the FSOR must also explain the reasons for rejecting these alternatives, or others submitted to the DPC, that would lessen the adverse economic impact on small business. [Government Code section 11346.9(a)(5)]

If you have any questions regarding our comments, please contact Kathy McLaughlin of the Regulation Review Unit at (916) 323-5821. We look forward to receiving a copy of your responses to our comments, so we can better understand the findings of your agency regarding the proposed regulation.

LOREN KAYE
Undersecretary

cc: Karin Finn, Budget Analyst
California Department of Finance

Tri-TAC

Jointly sponsored by:
League of California Cities
California Association of Sanitation Agencies
California Water Pollution Control Association

Reply to:
1010 Chadbourne Road
Fairfield, CA 94585

April 1, 1996

Ms. Margit Aramburu
Executive Director
Delta Protection Commission
P.O. Box 530
Walnut Grove, CA 95690

APR - 3 REC'D

Subject: **Comments on Proposed Regulation Governing Siting of New Sewage Treatment Facilities and Areas For Disposal of Sewage Effluent and Sewage Sludge in the Primary Zone of the Sacramento, San-Joaquin Delta**

Dear Ms. Aramburu:

This letter provides comments on the proposed regulation which would ban sewage effluent (recycled water) and sewage sludge (biosolids). We recognize that the primary zone of the delta has several unique environmental conditions, but recycled water and biosolids use remain environmentally responsible options even in the primary zone of the delta. We concur that construction of infrastructure for new sewage treatment facilities (including storage ponds) can be categorized as a land use issue and within the authority of the Delta Protection Commission (DPC), but we believe that recycled water and biosolids use is clearly beyond the authority of the DPC. Specifically, the biosolids and recycled water provisions of the proposed regulation clearly violate several critical review standards in the Administrative Procedures Act (APA). Therefore, we request that all recycled water and biosolids provisions be deleted from the proposed regulation.

TRI-TAC ORGANIZATION

Tri-TAC is a non-profit professional organization sponsored by the League of California Cities, California Association of Sanitation Agencies (CASA), and the California Water Pollution Control Association (CWPCA). Tri-TAC's mission is to work with regional, state, and federal regulatory agencies on matters relating to publicly-owned treatment works (POTWs), with the goal of improving the overall effectiveness of environmental programs and regulations that impact POTWs in California.

(90)

SUMMARY OF TRI-TAC POSITION

Tri-TAC urges the Delta Protection Commission to reconsider its proposal to ban the use of biosolids and recycled water into the primary zone of the delta because:

- Biosolids and recycled water use are environmentally sound and beneficial practices which are already heavily regulated at the federal, state and local levels.

- Regulations and policies regarding biosolids and recycled water use must be based on scientific evidence and actual need to protect human health and the environment. Regulations based on incomplete analysis or non-scientific prejudice are inappropriate.

- The proposed ban on biosolids and recycled water in the primary zone of the delta does not have any scientific basis, is not necessary to protect the mission of the Delta Protection Act, and is counterproductive to statewide recycling needs.

- Biosolids and recycled water are commodities which are compatible with agriculture, and can benefit agriculture. The objective of the Delta Protection Commission is to develop land use policies to preserve the resources of the Delta. Regulation of commodities compatible with agricultural practices is not necessary to preserve the resources of the Delta.

- Protection of water quality in California is the responsibility of the State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards (RWQCBs). Through the public process of preparing and issuing waste discharge requirements (WDRs), RWQCBs will assure that biosolids and recycled water use do not impair the beneficial use of water resources.

- The DPC lacks the authority to regulate recycled water and biosolids use.

Tri-TAC supports additional study of the unique aspects of the delta which have been cited by the DPC as potential reasons for restricting biosolids and recycled water, provided this work is conducted by recognized technical experts and is based on a risk analysis reflecting actual and not perceived impacts.

ADMINISTRATIVE PROCEDURES ACT (APA) ISSUES

The biosolids and recycled water policy fails to meet several APA review standards as identified below:

Necessity

The biosolids and recycled water policy is not necessary and is not supported by fair or substantial reason. These commodities are already extensively regulated, and additional regulation is not necessary to protect public health and the environment.

Authority

The Delta Protection Commission does not have the authority to regulate biosolids and recycled water. Section 29715 of the Delta Protection Act states that "to the extent of any conflict or inconsistency between this division and any provision of the Water Code, the provisions of the Water Code shall prevail." The Water Code essentially requires that recycled water be used when it is safe, available and economical. Section 13550 of the Water Code states that "the Legislature hereby finds and declares that the use of potable domestic water for nonpotable uses, including but not limited to cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of such water within the meaning of Section 2 of Article X of the California Constitution if reclaimed water is available which meets all of the following conditions...."

Another limitation on the DPC's authority arises from Section 29716 of the Delta Protection Act which states that the commission is not authorized to exercise jurisdiction over matters within the jurisdiction of any other state agencies. The proposed policy clearly violates this provision of the Delta Protection Act because biosolids and recycled water are extensively regulated by federal and state laws, regulations, and agencies.

A third limitation on authority is based on paragraph 29763.5 (k) of the Delta Protection Act which states that "the general plan, and any development approved or proposed that is consistent with the plan, will not result in any increased requirements or restrictions upon agricultural practices in the primary zone." Because recycled water and biosolids are suitable for agricultural use, a ban on their use would clearly be a restriction in agricultural practices.

Consistency

The biosolids and recycled water policy is not consistent with existing state laws and policies. Several examples are as follows:

- The California Department of Food and Agriculture regulates biosolids as a fertilizer product.
- The California Regional Water Quality Control Boards consider biosolids land application to be a relatively low risk activity.
- Section 13550 of the California Water Code clearly supports the use of recycled water.

Clarity

The biosolids and recycled water policy is not clear. For example, it states that these commodities cannot be disposed, but it is not clear whether it limits use of these commodities for agricultural purposes.

ENVIRONMENTAL DOCUMENTATION

The environmental analysis presented in the staff report dated February 23, 1996 is inadequate. The entire analysis is based on assumptions and conjecture that biosolids and recycled water will be harmful to the unique resources of the delta, but the scientific basis remains undocumented. It is insufficient to claim that there are potentially harmful constituents in biosolids and recycled water and that these constituents could come in contact with the environment thereby creating a threat to the resources of the delta. This same logic could easily apply to a vast array of human activities including use of septic tanks, operation of combustion engines, tilling agricultural land and creating dust, and application of herbicides and pesticides. The missing link in the logic in the environmental analysis is the application of risk analysis taking into the account the concentrations of potentially harmful constituents, the transport mechanisms for the constituents, the resulting concentrations in the environment, and the specific impacts from these resulting concentrations. A risk analysis covering a broad range of environmental conditions was performed in development of the 40 CFR 503 biosolids regulations.

The environmental analysis fails to recognize off site impacts from the proposed regulation. Clearly, this regulation will lead to propagation of myths and increased fear over the use of biosolids and recycled water, making recycling substantially more difficult throughout California. As a result, recycling efforts will decline, and placement of biosolids in landfills will increase. This waste of a fertilizer resource, a water resource, and landfill space is a significant and negative environmental impact which has not been addressed.

SAFETY OF BIOSOLIDS AND RECYCLED WATER

Biosolids and recycled water are currently used extensively throughout the United States, and have been proven as safe to human health and the environment. Safety of these products is achieved through treatment, regulations, regulatory oversight and management practices.

Biosolids

Applying biosolids to agricultural land for crop production has been a common practice for decades. U.S. Environmental Protection Agency (EPA) statistics indicates that nearly 50% of biosolids are currently applied to the land, and land application takes place in 46 of the 50 states. Virtually all land uses are compatible with biosolids use if biosolids are properly treated and their application is well managed. Long-term scientific studies have consistently demonstrated that biosolids recycling is both safe and beneficial. This research strongly supports the finding of the EPA that "in fact, in all the years that properly treated biosolids have been applied to the land, we have been unable to find one documented case of illness or disease that resulted" (Martha Prothro, former Deputy Assistant Administrator for Water, US EPA, statement made September 1, 1992).

In February 1993, the EPA completed a landmark set of regulations governing the use of biosolids (40 CFR 503). These regulations were developed through extensive research on the composition of biosolids and the potential impact of biosolids on human health and the environment. In promulgating this rule, the EPA examined impacts on groundwater, air and soil quality, and surface water runoff. Exposure pathways to humans included eating, breathing and drinking. In establishing the regulations, a conservative approach was taken to cover a wide range of environmental settings and to

protect highly exposed humans, plants, and animals. Based on the research behind these regulations, land application of biosolids is supported by the EPA, the U.S. Department of Agriculture and the U.S. Food and Drug Administration.

The federal biosolids regulations include standards for treatment to remove pathogens, standards for metals concentrations, and standards for vector attraction reduction. By meeting these standards, biosolids are suitable for beneficial use. To assure that quality biosolids are produced, the federal regulations include monitoring, recordkeeping and reporting requirements. Biosolids generators are required to certify the quality of their biosolids on an annual basis.

In California, land application of biosolids is also regulated by the State Water Resources Control Board (SWRCB) through Waste Discharge Requirements (WDRs) issued by the Regional Water Quality Control Boards (RWQCB). In developing WDRs, RWQCBs will take site specific conditions into account and establish requirements through a public forum to assure that water resources are protected. Typically, the federal biosolids regulations are more than adequate to protect water quality. The RWQCBs will also establish monitoring and reporting requirements as necessary.

A wide variety of other state and local agencies can be involved in land application of biosolids including, the State Department of Health Services, Air Quality Management Districts, local health departments, and local land use agencies. The California Department of Food and Agriculture is involved through requirements to register biosolids as a fertilizer product.

Recycled Water

Applying recycled water to agricultural land for crop production has been a common practice in California for decades. In a 1987 survey by the State Water Resources Control Board, 854 water recycling projects were identified in California. Of these, 240 were agricultural, representing 63 percent of the volume of recycled water used. The total volume of recycled water used for agricultural irrigation in 1987 was 166,317 acre-feet. Given the large number and volume of recycled water projects over a relatively long period of time, it is highly significant that no public health, agricultural, or environmental problems have been reported with such use. This experience record is

superior to nearly all other products commonly used on farms. There are three concerns which are typically expressed about application of recycled water on agricultural land for crop production: 1) health, 2) crop quality, and 3) water quality.

Health: Protection of health is the responsibility of the California Department of Health Services (DOHS) and the county health departments which follow requirements are set forth in the California Code of Regulations (Title 22), which allows use of recycled water for irrigation of all crops, including those eaten raw. The level of treatment required for irrigation of each type of crop is specifically indicated in the regulations.

In 1977, a landmark study of tertiary recycled water was concluded by the Sanitation Districts of Los Angeles County. The study's principal result was that a sufficient removal of virus can be achieved with tertiary filtration of secondary effluent, resulting in a disinfected tertiary effluent acceptable for irrigation of unrestricted recreational areas or use on food crops eaten raw. In summary, the use of recycled water for crop production is safe, and existing regulations provide quality, monitoring, and reliability requirements to assure the use of recycled water is safe.

Crop Quality: The five year Monterey Wastewater Reclamation Study for Agriculture (1980-85) evaluated the use of tertiary recycled water for irrigation of food crops. The study was performed in the Salinas Valley. Lettuce, broccoli, cauliflower, celery, and artichokes were grown on 96 replicated plots for the duration of the project. Highly controlled application of two different reclaimed waters and a control (well water) on designated plots over the five years provided the sample materials for laboratory testing. Samples were taken from the soil, plant edible tissues, residual tissues, the three irrigation waters, and from the neighboring fields. Tests were run for chemicals, bacteria, virus, shelf life of the produce, visual quality, and other agronomic parameters. The primary conclusion of the study was that irrigating raw eaten crops with tertiary recycled water is safe and is not significantly different from irrigating with water drawn from local 600 foot deep wells. No impacts on the shallow groundwater were detected. No effect was observed on neighboring fields. No accumulation of heavy metals was detected nor computed, given the extremely low levels in all of the irrigation waters.

While each project must be evaluated on its unique crop types and water quality characteristics, the Monterey study and many years of experience with other agricultural reuse projects clearly demonstrates that recycled water can be used on many crops without affecting crop quality.

Water Quality: Protection of water quality is the responsibility of the State Water Resources Control Board and the Regional Water Quality Control Boards (RWQCBs). The RWQCBs exercise their role through the issuance of waste discharge requirements (WDRs) for each water recycling project. The WDRs establish numerical water quality standards, reliability standards, and monitoring requirements so that the beneficial uses of water resources are not impaired. Where salinity is an issue of concern, each project is evaluated individually for its impact on the soil, surface water, groundwater, etc., to establish appropriate agronomic criteria.

In conclusion, Tri-TAC believes that the recycled water and biosolids provisions of the proposed regulation are unnecessary to protect the primary zone of the delta, they do not meet the standards of review in the Administrative Procedures Act, and the Delta Protection Commission does not have the authority to implement these provisions in the proposed regulation. Therefore, we request that the recycled water and biosolids provisions of the proposed regulation be deleted.

Thank you for the opportunity to provide comments on the proposed regulations. If you have any questions, please feel free to contact Leslie Lundgren (415-558-4013), or Mike Moore (714-962-2411 ext. 3654) of Tri-TAC's Land Committee.

Sincerely,

Richard F. Luthy, Jr.
Tri-TAC Chair

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APR - 2 REC'D

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March 27, 1996

Ms. Margit Aramburu
Executive Director
Delta Protection Commission
14215 River Road
P.O. Box 530
Walnut Grove, CA 95690

VIA FEDERAL EXPRESS

Re: Notice of Proposed Adoption of Regulation Governing Siting of New Sewage Treatment Facilities and Areas For Disposal of Sewage Effluent and Sewage Sludge in the Primary Zone of the Delta ("NPA")

Dear Ms. Aramburu:

This firm represents Wheelabrator Clear Water Systems, Inc., Bio Gro Division ("Bio Gro") and submits these comments in response to the NPA referenced above. In addition to these written comments, Bio Gro intends to provide testimony at the hearing scheduled for March 28, 1996, at 6:30 p.m. at the Jean Harvie Community Center in Walnut Grove, California.

A. The Notice Of Proposed Adoption ("NPA") Is Legally Deficient

As the Commission is aware, the purpose of the Administrative Procedure Act ("APA") (Gov't Code §§ 11340 *et seq.*) is to assure that unnecessary regulatory burdens on private individuals, California businesses and state and local governments is avoided. (Gov't Code § 11340.1.) At the same time, the procedures set forth in the APA with which state agencies must comply in adopting regulations are intended to ensure fair and adequate opportunity for interested parties and the public to meaningfully participate in the rulemaking process. (Gov't. Code § 11346.) In order to have such an opportunity, interested parties and the general public rely on agencies proposing to adopt regulations to provide clear and adequate information regarding the proposed regulatory action.

A review of the undated NPA received by this office from the Commission's legal counsel on March 7, 1996, reveals that the NPA is legally deficient in several respects. Short of correcting these deficiencies and re-commencing the public comment and hearing period, any action taken by the Commission based on the deficient NPA would

be subject to administrative reversal by the Office of Administrative Law ("OAL") and/or subject to judicial challenge by any interested party.

1. Summary of Differences Between P-3 and Existing Laws

The NPA must contain an informative digest which sets forth a clear and concise summary of existing laws and regulations, if any, related to the proposed regulatory action. (Gov't Code § 11346.5(a)(3).) As a threshold matter, the "digest" contained in page 3 of the NPA fails to summarize the federal regulations found at 40 CFR Part 503 ("503 Regulations") in a concise and clear manner. Bio Gro believes that if this requirement were met, the Commission would have little choice but to conclude that the proposed regulatory action is unnecessary and unwarranted.

In addition, the digest fails to identify the fact that biosolids are already being regulated within the Delta Primary Zone by at least two other state agencies. The first -- California Department of Food and Agriculture -- regulates biosolids as a fertilizer under state law. A copy of the DFA's conclusion that biosolids are to be regulated as a fertilizer is enclosed herewith as Exhibit A. The second -- Central Valley Regional Water Quality Control Board -- has issued "Waste Discharge Requirements General Order for Reuse of Biosolids and Septage on Agricultural, Forest and Reclamation Sites," (No. 95-140)("General Order"). This General Order creates a comprehensive regulatory framework for the land application of biosolids throughout the Central Valley, including the Delta Primary Zone.

Finally, the digest contained in the NPA does not even attempt to explain the differences between the federal and state regulations and the proposed regulatory action. The information called for in Government Code Section 11346.5 should not be considered "boilerplate" language offered merely to satisfy a "checklist" of APA compliance. In fact, without the information required, the Commissioners -- as well as the general public and OAL -- cannot reach a fully-informed conclusion as to the merits or demerits of the proposed regulatory action. If such information were provided, it is clear that the proposed regulatory action before the Commission is unnecessary, redundant and a significant burden on many sectors of the California citizenry.

2. Determination Regarding Local Agency Mandates

The NPA contains a conclusory statement that "the proposal would impose a mandate on local agencies." While this statement *may* meet the technical letter of the law under Government Code Section 11346.5(a)(5), it certainly does not meet the spirit and intent of the APA.

The "technical" requirement of Section 11346.5(a)(5) is that the NPA contain a "determination" as to whether the proposed regulatory action imposes a mandate on local

agencies. Yet the conclusory statement on page 3 of the NPA provides no information to the general public -- or OAL -- regarding the kinds of mandates that will be placed on local agencies.

At a minimum, the determination should describe the mandates that local agencies will have to process new general plans, specific area plans, and possibly even revise zoning ordinances in their respective jurisdictions to conform with the proposed regulatory action. It is clear that the proposed regulation will require these actions.

In addition, the determination should also inform the general public of the probable mandates on local agencies related to defending future legal actions brought against cities and/or counties that adopt illegal general plans, specific area plans or zoning regulations to conform with the proposed regulatory action.

Finally, the proposed regulation will have dramatic impacts on opportunities for local agencies to comply with the AB 939 waste diversion and recycling mandates. If the proposed regulation is adopted, these local agencies will be forced to choose between exacerbating limited landfill space, or the costly transportation of biosolids out of state for disposal. The NPA acknowledges neither of these impacts.

3. Estimate Of Costs Or Savings To State And Local Agencies

The NPA must contain an estimate of the cost or savings to any state agency, cost to any local agency required to be reimbursed under Part 7 of the Government Code, and other nondiscretionary cost or savings imposed on local agencies. (Gov't Code § 11346.5(a)(6).) "Cost or savings" is defined by statute to mean "additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations." The conclusory statements contained in page 3 of the NPA do not meet even the minimal legal requirements set forth in Section 11346.5(a)(6).

First, there is no indication that any of the estimates were prepared in accordance with instructions adopted by the Department of Finance. If they were, the NPA should state so. If they were not, the requirement has not been met and the estimates are invalid.

Second, the NPA concludes that adopting the proposed regulatory action would result in no cost to any state agency. This is not true. For instance, if the proposed regulation is adopted by the Commission, the Commission would undoubtedly face further legal challenges to the proposed regulation. These costs must be factored into any decision taken by the Commission. Additionally, the proposed regulation will have inevitable costs on other state agencies -- such as the Department of Food and Agriculture and the CVRWQCB. Permitting fees alone, paid to the CVRWQCB under its current General Order, will be lost which must also be factored into the Commission's decision.

Second, the NPA concludes, as to other nondiscretionary costs imposed on local agencies, that:

> *"There may be added costs or savings to local governments, such as sewage districts, for costs of transportation of sewage effluent or sewage sludge if that material must be transported a longer or shorter distance from the point of origin."*

This conclusory statement is inadequate. It does not highlight the proposed exemptions created in the proposed regulatory action for two local sewage treatment plants. Under these exemptions, the two local sewage treatment plants would have virtually unfettered right to dispose of and land apply effluent and biosolids within the Delta Primary Zone. Theoretically, Jersey Island could be used by the Ironhouse Sanitary District to import sewage effluent and biosolids from any other municipality in the State, any state in the nation, and virtually any other county in the world. Those economic impacts must also be considered and presented in the NPA.

The conclusion that the proposed regulatory action will have no other cost impact on local agencies also fails to consider the likelihood of numerous, individual legal challenges to each city's or county's illegal general plan, specific area plan and zoning amendments, in the event they attempt to conform with the proposed regulatory action. These likely legal costs must be acknowledged and assessed in the NPA.

Finally, the local agency cost estimate fails to assess the impact of continued unfettered use of chemical fertilizers and pesticides on local agencies in the future. Now that a safe, economical and reliable alternative to these chemical fertilizers and pesticides is available, the Commission has an obligation to address these issues. There will likely be heightened scrutiny and regulation of chemical fertilizers, pesticides and herbicides in the future, and increased local government regulation and oversight costs are inevitable.

4. Determination Of Adverse Impact On Business

The NPA concludes, at page 4, that "*[t]he Commission has determined that the adoption of the proposed regulation would not have a significant adverse economic impact on business.*" As a justification for this unsupported conclusion, the NPA offers that "*[t]he effluent and sludge disposal business will continue to have access to adequate sites to appropriately and cost-effectively dispose of such materials.*" The NPA suggests that, since the entire State of California includes "100,000,000 acres" and that "*the proposed regulation would preclude placement on 450,000 acres, or about four and one-half percent of the State of California,*" there will be limited impact on businesses as a result of the proposed regulation.

The rationale to justify this conclusion is faulty in a number of respects. First, by its own terms, the Commission has limited its analysis to only two types of businesses. There is nothing in the APA that authorizes such a limited analysis. Second, the NPA purports only to address a limited part of the agriculture industry -- certain food crops. There is no evidence in the NPA to suggest that the Commission has -- or intends to -- analyze the impacts of the proposed regulation on other types of agricultural industry. Moreover, there is little in the NPA to support the conclusory statements that *"no [agriculture] products will be purchased if grown on lands where sewage effluent and/or sewage sludge have been placed."* Third, it is pure folly to presume that, if a regulation such as the one proposed by the Commission is allowed to stand, other jurisdictions around the state will not also seek to ban biosolids land application. This sort of a "domino" effect would be disastrous to farmers who want to use biosolids, to POTWs that must find acceptable means by which to dispose of biosolids, on dwindling land fill capacity around the state and on the environment of California in general.

The Commission's pre-ordained "findings" (made, ironically, without any public comment or hearings and discussion by the Commission) focus on misperceptions of potential impacts on business limited to "the effluent and sludge disposal business." What is lost by this limited analysis are the impacts to small farms, nurseries, and publicly owned treatment works. This section of the NPA baldly states that *"[t]he purpose of the regulation is to protect long-term viability of agricultural lands in the Primary Zone of the Delta."* What this statement -- and the Commission -- ignores is that there are many farmers in the Delta Primary Zone who want to receive and use biosolids for their farms. Since this material is provided to farmers free of charge, the proposed regulation will result in unnecessary and unjustifiable increased farming costs.

5. Potential Costs On Private Persons/Businesses Directly Affected By The Proposed Regulation

This section of the NPA suggests that *"[t]he potential cost impact to agricultural business is minimal in that agricultural businesses will simply continue to operate as they do currently. Effluent and/or sludge disposal companies may incur slightly higher or lower transportation costs if materials must be transported farther or closer from a point of origin."* Once again, this cursory attempt to meet the requirements of Government Code Section 11346.5(a)(9) is deficient.

First, as noted above, the Commission incorrectly limits its analysis to only two businesses. No consideration is given to nurseries or other private users of biosolids, nor to POTWs who must comply with a myriad of federal, state and local laws and regulations concerning effluent and sludge disposal.

Second, to say that the impact of denying farmers in the Delta Primary Zone a viable source of FREE fertilizing material is "minimal" is non-sensical. Some estimates

indicate that farmers using biosolids instead of chemical fertilizers can save between $25,000 and $200,000 annually in fertilizing and related costs per application site. Moreover, recent studies from San Diego concerning crop yield comparison indicate that agricultural productivity can rise between 16-51% when biosolids are used. (*See*, "Crop Response to Sewage Sludge Compost: A Preliminary Report," 47 California Agriculture, pp. 22024; Table 2, attached as Exhibit B.)

Finally, Section 11346.5(a)(9) requires the Commission to assess the "*reasonable range of costs, or a description of the type and extent of costs, direct or indirect, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.*" The NPA contains no evidence that such an assessment was conducted.

6. Potential Impact On Small Businesses

Section 11346.5(a)(10) requires the NPA to contain a "statement of the results of the assessment required by subdivision (b) of Section 11346.3." There is no evidence in the NPA that the Commission has completed the assessment required under Section 11346.3(b). The section in the NPA presumably intended to meet the requirement of Section 11346.5(a)(10) is woefully inadequate, and is merely a "boilerplate" copy of the text offered for the previous section.

The Commission's proposed regulation will likely have profound implications on the biosolids industry. Although it would certainly be expected to lead to the elimination of some jobs if adopted, there is tremendous opportunity for job growth and creation if the proposed regulation is not adopted. This can be said also of the opportunities for expansion of businesses currently doing business in the State.

B. The Proposed Regulation Does Not Meet The "Necessity," "Consistency," "Authority" And "Nonduplication" Standards Under The APA

Prior to becoming effective, any proposed agency regulation must be reviewed by OAL and must meet the "necessity," "consistency," "authority" and "nonduplication" standards under the APA. (Gov't Code § 11349.1.) The proposed regulation does not, and cannot, meet these standards.

1. The Proposed Regulation Is Not "Necessary"

The "Statement of Reasons Supporting the Adoption of Regulation" ("SOR") contained in the NPA claims that the "proposed regulation would protect natural resources, including soils, water, wildlife habitat, and wildlife by protecting them from inappropriate and incompatible land uses as an integral part of the Commission's planning program." The SOR goes on to cite levee breaks, drinking water demands and

wildlife habitat demands in and around the Delta Primary Zone as justification for the proposed regulation. The theory advanced by the Commission apparently is that soils on which biosolids have been applied have a high risk of contaminating water and wildlife habitat in the Delta Primary Zone.

However, the proposed regulation is not "necessary" to accomplish the stated goals contained in the SOR or the NPA. The regulation is not necessary because both the U.S. Environmental Protection Agency and the Central Valley Regional Water Quality Control Board have adopted regulations to adequately address the legitimate environmental concerns related to land application of biosolids. (*See*, U.S. EPA's 503 Regulations and the CVRWQCB General Order No. 95-140.) Moreover, if one accepts the arguments proffered by the Commission to support the proposed regulation, it is inconceivable that the regulation can achieve its stated goal of preventing contamination of water and wildlife habitat in the Delta Primary Zone. By its own terms and relying on the Commission's faulty reasoning, the proposed regulation would contribute to the alleged environmental problem it seeks to avoid. This is because the proposed regulation will allow the unfettered, uncontrolled, and potentially damaging disposal of sewage effluent and sewage sludge in the Delta Primary Zone from the Rio Vista project and Ironhouse Sanitary District use of Jersey Island. Certainly, the Commission must acknowledge the inconsistent and unsupportable contradiction of prohibiting the safe, regulated land application of high quality biosolids while continuing to permit uncontrolled disposal of sewage effluent and sewage sludge to the Delta Primary Zone.

Bio Gro respectfully requests the Commission to explain, in detail, why it is "necessary" to ban certain types of biosolids land application in the Delta Primary zone, while creating an exemption to allow two local entities absolute freedom to dispose of sewage effluent and sewage sludge in the Delta.

2. The Commission Does Not Have The "Authority" To Adopt The Proposed Regulation

It is well-established that a state agency may not, under the guise of its rule making powers, abridge or enlarge its authority or exceed the powers granted to it by statute. (*California Employment Commission v. Kovacevich*, 27 Cal.2d 546, 553 (1946)). A close analysis of the enabling statute for the Commission's authority reveals that the proposed regulation is an impermissible expansion of its powers, contrary to the letter and intent of the statute.

a. The Proposed Regulation Is Contrary To The Stated Goals Of The Delta Protection Act

One of the stated goals of the Delta Protection Act of 1992 (Public Resources Code Section 29700 *et seq.*) is to [p]rotect, maintain, and, where possible,

enhance and restore the overall quality of the delta environment, including, but not limited to, agriculture . . . ." (Pub. Res. Code § 29702(a).) In seeking to enhance agriculture in the Delta, the Commission is charged with the development of a comprehensive land use and resource management plan for land uses within the Delta Primary Zone. (Pub. Res. Code § 29760.) As directed by the statute, the Commission's plan must, among other things, "conserve and protect the quality of renewable resources," and "preserve and protect agricultural viability." (Pub. Res. Code § 29760(b)(2) and (3).)

There is an inherent conflict in the nature of the Commission's authority to issue a regulation that would apply throughout the Delta Primary Zone, and the subsequent affirmative action required by each of the local governments within the Delta. After adoption of the regulation by the Commission, each local government must submit general plan amendments that will render their respective general plans consistent with the Commission's regulation. (Pub. Res. Code § 29763.) Generally, the revised general plans of each local government must regulate development within their local jurisdictions, consistent with the Delta Protection Act. "Development" is defined specifically to exclude "all farming and ranching activities, as specified in [Civil Code Section 3482.5(e)]." (Pub. Res. Code § 29723(b)(1).) However, under the DPA, no local government's general plan amendment shall "result in any increased requirements or restrictions upon agricultural practices in the primary zone." (Pub. Res. Code § 29763.5(k).)

The proposed regulation is contrary to the stated goals and provisions of the Delta Protection Act because the effect of the proposed regulation would be to inhibit farming and ranching activities within the Delta Primary Zone by precluding the free use of soil amendments such as biosolids. In this way, the proposed regulation would undermine the legislative intent behind the Act to "protect and enhance" agricultural activities in the Delta. At the same time, the proposed regulation would purport to require local governments to adopt general plan amendments that would effect the biosolids ban within the Delta Primary Zone. Such a local prohibition would clearly violate the strictures of the Act.

b. <u>The Proposed Regulation Would Conflict With Specific Provisions Of The Act</u>

Section 29716 of the Act specifies that "Nothing in this division authorizes the Commission to exercise any jurisdiction over matters within the jurisdiction of, or to carry out its powers and duties in conflict with the powers and duties of, any other state agency." Yet, by the terms of the proposed regulation, the Commission would purport to regulate the land application of biosolids within the Delta Primary Zone. This, it cannot do.

There are at least two other state agencies that currently have jurisdiction to regulate biosolids and the land application of sludge. The Central Valley Regional Water Quality Control Board has already adopted regulations and permitting requirements regarding the land application of biosolids. As such, the Commission is clearly barred from attempting to exercise jurisdiction over sludge application as well. In addition, the Department of Food and Agriculture has asserted regulatory authority over biosolids pursuant to its authority to regulate the labeling of fertilizers. (*See*, Exhibit A.)

Furthermore, by its terms, the proposed regulation would create an inherently inconsistent regulatory scheme as applied to the use of biosolids as agricultural practices within the Delta Primary Zone. Under the Delta Protection Act, no local government's general plan may "result in any increased requirements or restrictions upon agricultural practices in the primary zone." (Pub. Res. Code § 29763.5(k).) Nevertheless, if the proposed regulation is adopted, each local government will be required to adopt general plan amendments that severely restrict agricultural practices in the Delta, and therefore would clearly conflict with the provisions of the Act.

3. The Proposed Regulation Is Not "Consistent"

"Consistency" as defined in the APA, means "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." (Gov't Code § 11349(d).) There are at least four reasons why this requirement cannot be met as to the proposed regulation.

a. The Exemption Created Under the Regulation Would Result in the Same Alleged Harm

The proposed regulation is inherently contradictory and inconsistent, and thus flawed. On the one hand, the proposed regulation purports to "protect natural resources, including soils, water, wildlife habitat and wildlife, by protecting them from inappropriate and incompatible land uses." Presumably, the careful land application of biosolids pursuant to the 503 Regulations and the CVRWQCB General Order are "inappropriate and incompatible land uses" referred to in the SOR. Yet by the very nature of the proposed regulation, the careful land application of biosolids would be prohibited, while the unfettered disposal of sewage effluent and sewage sludge by Ironhouse Sanitary District and pursuant to the Rio Vista project would not be regulated at all. This inconsistent and contradictory predicament has not been adequately explained by the Commission, and cannot withstand scrutiny under law.

b. The Regulation Fails to Address the Environmental Hazards of Increased Chemical Fertilizers and Pesticides in the Delta

The SOR claims that a chief goal of the regulation is to protect critical drinking water supplies and wildlife habitat from the alleged evils of overflow surface water that has come in contact with soils to which biosolids have been applied. Yet no consideration is given to protecting these same drinking water supplies and wildlife habitat from overflow runoff from chemically-fertilized agricultural lands. Certainly, the evils of such chemical fertilizer run-off -- as graphically demonstrated by the Kesterson experience -- is known to the Commission. The proposed regulation would prohibit beneficial reuse of biosolids as fertilizer, and lead to even heavier reliance on chemical fertilizers and pesticides which have been demonstrated to pose an even greater environmental and human health hazard. In fact, a review of the types of chemical fertilizers used in the Delta Primary Zone reveals that the following materials are exposed to drinking water supplies and wildlife habitat: 2,4-Diphenylamine, paraquat, diazinine, glycophate, treflam, malathione, pyrethrin, ammonia nitrate, urea, phosphates and nitrogen. Some of these constituents can be found on either or both of the lists of chemicals known to the State of California to cause cancer or reproductive toxicity (Proposition 65) and under the comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

c. The Regulation Would Contradict Established Policies of Other State Agencies

The proposed regulation is most definitely not in harmony with other statutes and regulations in California. In fact, the Commission's insistence on pursuing this ill-conceived regulatory action is an example of different state agencies pursuing contradictory policy. On the one hand, the Department of Food and Agriculture has decreed that biosolids are to be regulated as fertilizer. Furthermore, the CVRWQCB has enthusiastically endorsed the careful, regulated land application of biosolids via its General Order, with no limitations based on a geo-politically derived map of territory now known as the "Delta Primary Zone." All of this has occurred in front of a backdrop comprised of the 503 Regulations, which were only issued after years of experience and study of biosolids land application and significant input from the agriculture and environmental communities. Without any technical or scientific bases for doing so, the Commission has apparently determined that some biosolids in the Delta Primary Zone are bad, but disposal of sewage effluent and sewage sludge from the Ironhorse Sanitary District and Rio Vista project is alright. This disharmony has created an atmosphere of uncertainty, baseless fear, and regulatory gridlock -- all to the detriment of the farming community in the Delta, and the resources within the Delta Primary Zone.

d. The Regulation Violates the United States Constitution

It is incontrovertible that the proposed regulation is inconsistent with federal constitutional law and recent federal court decisions interpreting the Commerce Clause, Equal Protection Clause and Due Process Clause of the U.S. Constitution. In particular, the proposed regulation creates an unlawful barrier to the free flow of interstate commerce, crates an unlawful distinction and preference for local interests to the exclusion on non-exempt parties, and creates an irrational and arbitrary classification against non-local biosolids and in favor of chemical fertilizers.

(i) The Proposed Regulation Violates The Commerce Clause

The Commerce Clause limits "States from erecting barriers to the free flow of interstate commerce." (*Raymond Motor Transp. v. Rice*, 434 U.S. 429, 440, 98 S.Ct. 787, 54 L.Ed.2d 664 (1978).) Biosolids and waste products are articles of commerce. (*Fort Gratiot Sanitary Landfill Inc. v. Michigan Dept. of Natural Resources*, 504 U.S.–, 112 S.Ct. 2019, 119 L.Ed.2d 139, 146-47 (1992). (holding that a ban on out-of-county waste was *per se* unconstitutional).) When a statute "discriminates against interstate commerce, or when its effect is to favor in-state economic interests [the Court has] generally struck down the statute without further inquiry." (*Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 579, 106 S.Ct. 2080, 90 L.Ed.2d 552 (1986) (emphasis added); *See also, City of Philadelphia v. New Jersey*, 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978). The effect of the proposed regulation is without doubt to favor "local" sludge over that which comes from outside the Delta Primary Zone. Irreparable harm must, therefore, be presumed and the regulation struck down without further inquiry.

Fort Gratiot, and the recent decision in *BFI Medical Waste Systems v. Whatcom County*, 983 F.2d 911 (9th Cir. 1993), well illustrate this point. As the BFI court emphatically declared: "out-of-county waste bans are *per se* unconstitutional." (*BFI Medical Waste Systems v. Whatcom County*, 983 F.2d at 913.) Moreover, "[d]iscrimination against interstate commerce in favor of local business or investment in *per se* invalid . . . ." (*C&A Carbone, Inc. v. Clarkstown*, 511 U.S. --, 114 S.Ct. --, 128 L. Ed. 2d 399, 409 (1994).)

The facts of the *BFI* case are particularly instructive. There, medical waste hauling companies brought action against a county to invalidate an ordinance banning out-of-county medical wastes. The ban was enacted as a health and safety measure. Nevertheless, the court held that "whatever the county's purpose, the ordinance on its face and in effect discriminates solely on the basis of origin." (*BFI Medical Waste Systems Inc. v. Whatcom County*, 756 F. Supp. 480, 484 (W.D. Wash. 1991) (emphasis added); *aff'd in part and rem.*, 983 F.2d 911 (9th Cir. 1993).

Moreover, in a recent case before Judge Coyle of the United States District Court for the Eastern District of California, the authority of a county to adopt a zoning ordinance that would have effectively banned the importation of sewage sludge was called into question. (*Pima Gro Systems, Inc. v. Merced County*, No. CV-F-93-5212-REC.) In that case, the County of Merced sought to adopt an ordinance that is similar in effect to the proposed regulation before the Commission. In granting plaintiffs' motions for preliminary injunction against Merced County, the court determined sludge is an article of commerce, and that the County's attempt to ban the importation of sludge from sewage treatment plants located **outside** the County, while continuing to allow the land application of "locally" produced sludge, was a *per se* violation of the Commerce Clause. (*See, Pima Gro Systems, Inc. v. Merced County*, Order Re: Motions for Preliminary Injunction, pp. 9-13, September 28, 1993.)

We have enclosed as Exhibit C a copy of an Opinion Memorandum from the Merced County Counsel's Office which further analyzes the Constitutionality of a ban on the importation of sewage sludge. Because the proposed regulation is substantially similar in practical effect as the Merced County zoning ordinance, we believe the Opinion Memorandum may be of interest to the Commission. In addition, we have enclosed as Exhibit D a copy of a legal opinion on the constitutionality of the proposed regulation by the Sacramento County Counsel's Office. That Opinion should be of immense importance to the Commission.

Much as in *BFI* and *Pima Gro Systems*, the proposed regulation would effect a *per se* ban on sludge derived from outside the Primary Zone because it would deny the application of such sludge to lands within the Primary Zone while at the same time allowing "local" sludge to be applied to these same lands. If, the proposed regulation is interpreted to allow Rio Vista and Ironhouse Sanitary District to import sludge from outside the Primary Zone, the proposed regulation would still be subject to challenge on Commerce Clause and Equal Protection grounds, as described below. (*See, C&A Carbone, Inc. v. Clarkstown*, 511 U.S. --, 114 S.Ct.--,, 128 L.Ed. 2d 399, 409 (1994) ("The Commerce Clause presumes a national market free from local legislation that discriminates in favor of local interests.").)

Nor can the proposed regulation be sustained by an argument that its restrictions apply equally to all non-Primary Zone sludge -- whether or not it comes from out-of-state. As the Court conclusively determined in *Fort Gratiot*, "[o]ur prior cases teach that a State . . . may not avoid the strictures of the Commerce Clause by curtailing the movement of articles of commerce through subdivisions of the State, rather than through the State itself." (*Fort Gratiot*, 504 U.S. at 2024; (emphasis added).)

In short, the proposed regulation's treatment of "foreign" sludge is, on its face, discriminatory. This is an unconstitutional preference for local sludge -- it acts as an exclusion based on origin alone because in practice it favors local entities by creating an

exemption for two local entities. (*See, Chemical Waste Management, Inc. v. Hunt*, 504 U.S. --, 112 S.Ct.2009, 119 L.Ed.2d 121, 134 (1992)(a ban on waste based on origin alone is unconstitutional).) The proposed regulation would be, therefore, a *per se* violation of the Commerce Clause.

Even if not a *per se* violation of the Commerce Clause, the policy cannot withstand constitutional scrutiny. Where simple economic protectionism is effected by state or local legislation, the ordinance is *per se* invalid, as it must be here. (*See, BFI Medical Waste Systems, Inc. v. Whatcom* County, 756 F.Supp. at 483.) Only when other legislative objectives are credibly advanced and there is no patent discrimination against interstate trade will be court adopt the balancing approach articulated in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed.2d 174 (1970). Assuming *arguendo* that the *Pike* balancing test must be applied, the proposed regulation would still be unconstitutional. This is so because it does not regulate evenhandedly, does not promote a legitimate public interest, places more than incidental burdens on interstate commerce, and does not contemplate alternatives less burdensome on interstate commerce.

The proposed regulation states that the restriction on "foreign" sludge is necessary to advance public health and land use conflict-related concerns, yet it can point to no evidence, or even a suggestion, that the restriction provides a greater safeguard than existing 503 Regulations and CVRWQCB General Order. More importantly, if the Commission members were genuinely concerned about protecting residents' health and safety, why does the proposed regulation continue to allow "local" sludge to be applied within the Primary Zone? Once again, it is not enough that the Commission express a public concern; that concern must be legitimate, *i.e.*, real, demonstrable and probable. Further, just because the Commission may cite "public health" as the reason for adopting the proposed regulation, this does not end the inquiry. (*Washington State Building & Construction Trades v. Spellman*, 684 F. 2d 627, 631 (9th Cir. 1982), *cert.den.*, 461 U.S. 913, 103 S.Ct. 1891, 77 L.Ed.2d 282 (1983), citing *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 670, 101 S.Ct. 1309, 1316, 67 L.Ed.2d 580 (1981) ("The incantation of a purpose to promote the public health or safety does not insulate a state law from Commerce Cause attack.").) There must be a factual basis the Commission's claims. (*Id.*) Yet, the Commission can cite to no health or safety study on which the proposed regulation is based, and can cite no health and safety study suggestion that biosolids derived from outside the Delta Primary Zone should be banned.

Moreover, the Commission can cite no logical reason for the proposed regulation's exemption that discriminates against treatment facilities or sludge derived from outside the Primary Zone. Indeed, why is sludge that comes from inside the Primary Zone better than sludge from outside the Primary Zone? The Commission has no answer; there is none.

Under *Pike*, a court must first decide that a statute or regulation regulates evenhandedly as between in-state and out-of-state articles of commerce. (*Pike v. Bruce Church*, 397 U.S. at 142.) The proposed regulation does not. First, "local" sludge could continue to be land applied within the Primary Zone. No "foreign" sludge is permitted within the Primary Zone -- period. Second, *Pike* requires a credible argument that the statute or regulation advanced legitimate state interests. The proposed regulation would not. There is no legitimate state interest -- save economic protection -- that the proposed regulation would advance. As such, no credible argument suggesting one exists.

Third, under *Pike* a court would have to find that the proposed regulation has only an "incidental" burden on interstate commerce even if legitimate public interests are advanced. (*Pike*, 397 U.S. at 144-145.) Here, as in *Fort Gratiot* and cases cited therein, the Policy acts as a complete ban on all out-of-Primary Zone sludge. It does so by erecting absolute barriers against one type of sludge, creating immense economic barriers to the application of another type of sludge, and yet at the same time, the proposed regulation offers exemptions to local public entities.

Thus, the burdens created by the proposed regulation are prohibitive; they cannot be considered merely incidental. Even if a balancing of the interests is warranted under the *Pike* test, the weight overwhelmingly dictates that the proposed regulation's preference for local interests, and its ban on sludge based on origin alone, must fail under the Commerce Clause.

Finally, *Pike* and its progeny require a finding that even if the burden is incidental, less burdensome means must be considered. Here, no alternatives to the absolute ban were considered, and for this reason alone the proposed regulation should be declared unconstitutional. The Commission could have, for example, considered an alternative to its absolute ban on "foreign" sludge. It simply did not. Rather, the Commission appears simply to have responded to a public cry to ban sludge from outside the Primary Zone altogether by proposing a regulation that has exactly that effect.

A recent and instructive application of the *Pike* factors is found in *BFI Medical Waste Systems*, even though the ordinance in question was invalidated under the *per se* rule. There, the Court determined that even if the ordinance banning out-of-county waste was not *per se* unconstitutional, the ban was still unconstitutional because under the *Pike* balancing test: (1) it applied different rules to waste based on origin; (2) the effect on interstate commerce was substantial; and (3) even though legitimate public interests existed, they could be promoted by less restrictive legislation and did not outweigh the burden on interstate commerce. (756 F.Supp. at 485-486.)

(ii) The Proposed Regulation Violates The Equal Protection Clause

The Equal Protection Clause of the U.S. Constitution prevents, "Governmental decision makers from treating differently persons who are in all relevant respects alike. (*Nordlinger v. Hahn*, 505 U.S. --, 112 S.Ct. 2326, 120 L.Ed.2d 1, 12 (1992).) The focus of the Equal Protection Clause is primarily on classifications of persons, and whether these classifications are rationally related to a legitimate state purpose. The Equal Protection Clause applies not only to fundamental interests, but to economic rights and interests as well. (*Burlington N.R. Co. v. Department of Public Service*, 763 F.2d 1106, 1112 (9th Cir. 1985).)

The proposed regulation would prevent the location of "new sewage treatment facilities . . . and areas for disposal of sewage effluent and sewage sludge" within the Delta Primary Zone unless such effluent and sludge is applied in conjunction with the Rio Vista project or the Ironhouse Sanitary District project on Jersey Island. The proposed regulation would apply different standards to sludge derived from within the Primary Zone than it does to sludge which comes from outside the Primary Zone, yet there is nothing contained in the record before the Commission that evidences a rational and legitimate distinction between these two types of sludge.

Furthermore, the proposed regulation would exempt two "local" projects from the ban on all "new" sludge within the Primary Zone. On its face, the proposed regulation would establish a preference for these two projects to the detriment of all other entities desiring to apply sludge within the Primary Zone. As written, the proposed regulation would not prevent either of the two preferred projects from being able to accept "foreign" sludge for land application within the Primary Zone. This exemption creates an unjustifiable distinction which favors local business interests, and is patently unconstitutional under the Equal Protection Clause.

Recently, the U.S. District Court for the Eastern District of California ruled in *Pima Gro Systems, Inc. v. Merced County*, (No. CV-F-93-5212-REC), that no rational basis existed for the unequal treatment of different classes of entities which produced essentially the same kind of sludge. (*See*, Order Re: Motions for Preliminary Injunction, pp. 15-17; September 28, 1993.) The same rationale would apply to the type of unequal classification the proposed regulation would create between established, local interests (Rio Vista and Ironhouse Sanitary District) to the obvious and significant detriment of any party other than those interests.

There is clearly no rational relationship between, nor any basis for the classifications made within the proposed regulation. No justification has been offered as to why "local" sludge should be treated differently than "foreign" sludge. Neither has any justification been given as to why the proposed regulation irrationally distinguishes between, sludge

from "new" wastewater treatment plants and sludge from treatment plans that are located outside of the Delta Primary Zone.

Simply put, there is no evidence on the record before the Commission, rational or otherwise, between useful and safe land application of sludge and the source of the sludge being applied. Moreover, there is nothing in the record that can legally establish a rational basis on which to create the discriminatory and preferential classification favoring two local entities and prohibiting any other party from applying sludge to lands within the Delta Primary Zone.

(iii) The Proposed Regulation Violates The Due Process Clause

The proposed regulation will be interpreted by a federal court to be exactly what it is: an arbitrary distinction which cannot withstand scrutiny under the Substantive Due Process Clause. The courts have consistently ruled that such arbitrary legislative enactments, unsupported by substantial evidence, violate substantive due process protections under the Fourteenth Amendment to the U.S. Constitution. (*See*, *Lockary v. Kayfetz*, 908 F.2d 543, 548 (9th Cir. 1990); *Sinaloa Lake Owners Association v. City of Simi Valley*, 882 F.2d 1398, 1409 (9th Cir. 1989); *Bateson v. Geisse*, 857 F.2d 1300, 1303 (9th Cir. 1988).)

In *Sinaloa*, for example, the court pointed out that "irrational and plainly arbitrary actions" are not within the State's police powers, and citing a concurring U.S. Supreme Court opinion in *Moore v. City of East Cleveland*, 431 U.S. 494, 520-21, 97 S.Ct. 1932, 1946, 52 L.Ed.2d 531 (1977), the Court noted that an "ordinance not shown to have substantial relation to public health, safety, or morals and which cuts deeply into fundamental rights . . . violates substantive due process." (882 F.2d at 1409-1410.)

In deciding the denial of due process, a court must look at factors such as "the need for the governmental action in question, the relationship between the need and the action, the extent of the harm inflicted, and whether the action was taken in good faith or for the purpose of causing harm." (*Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 882 F.2d at 1409.) The government may not act in a malicious, arbitrary or irrational manner. (*Kadrmas v. Dickinson Pub. Schools*, 487 U.S. 450, 463, 108 S.Ct. 2481, 101 L.Ed.2d 399 (1988), citing *Hodel v. Indiana*, 452 U.S. 314, 331-32, 101 S.Ct. 2376, 69 L.Ed.2d 40 (1980).)

Here, there is no need for the proposed regulation to ban the application of carefully applied biosolids derived from uses outside the Primary Zone. The 503 Regulations and the CVRWQCB General Order governing the land application of biosolids amply protect the public's health and safety. Thus, there is no legitimate public purpose served by the proposed regulation. Instead, the only purpose served is a discriminatory one.

The true impact of the proposed regulation is barely camouflaged; it is to ban the importation and land application of sludge from outside the Delta Primary Zone. It does so without any factual basis, and is thus the type of arbitrary action the courts forbid.

4. The Proposed Regulation Duplicates Other Regulations

As noted repeatedly above, biosolids are currently being regulated by at least three other federal and state agencies. In addition to the 503 Regulations issued by the U.S. Environmental Protection Agency, biosolids are regarded as fertilizer by the Department of Food and Agriculture, and are subject to the CVRWQCB General Order. The additional, inconsistent and illegal regulation of biosolids by the Commission is simply duplicative.

C. The Commission Must Consider Less Burdensome Alternatives To The Proposed Regulation

Under the APA, the Commission must consider less burdensome alternatives to the proposed regulation that will achieve the purpose of the regulation. (Govt. Code § 11346.5(a)(12).) The Commission has not considered such alternatives in the current rulemaking process, even though the Commission is well-aware of many examples of ordinances and regulations from around the country that apply to biosolids land application. These regulations have been deemed to adequately protect drinking water and other resources, and are typically based on depth-to-ground water measurements. There is no evidence that the Commission has made any effort to obtain and analyze these other regulations to ascertain their potential viability for use in the Delta.

In an effort to assist the Commission in achieving the purpose of the proposed regulation in a less burdensome manner, Bio Gro is pleased to submit to the commission a proposed, alternative regulation, enclosed herewith as Exhibit E. We believe this alternative proposal will meet all of the Commission's legitimate concerns, will preserve the right of farmers in the Delta Primary Zone to use biosolids if they wish, and is legally defensible under federal and state law.

D. The Commission's Proposed CERQA "Analysis" Is Deficient And Must Be Revised To Address All Environmental Impacts Related To The Proposed Regulation

According to the Commission's "Staff Report and Environmental Analysis for Proposed Amendment to the Land Use and Resource Management Plan for the Primary Zone of the Delta and Adoption of Regulation Governing Siting of New Sewage Treatment Facilities and Areas for Disposal of Sewage Effluent and Sewage Sludge in the Primary Zone of the Delta" dated February 23, 1996 ("Staff Report"), the Commission believes it can "use its environmental documents in lieu of preparing negative declarations or environmental impact reports." (Staff Report at p. 3.) In fact, the Commission's adoption

of the proposed regulation is not within the certified regulatory program approved by the Resources Agency, and must be preceded by an appropriate environmental document such as an EIR. Yet even if the proposed regulation is still entitled to the benefit of the Resources Agency certification, it does not meet the requirements set forth in CEQA.

1. The Proposed Regulation Is Not Within The Certified Regulatory Program Approved By The Resources Agency And Must, Therefore, Be Preceded By An EIR

By statute, only two regulatory actions of the Commission have been approved by the Resource as Agency, as part of a "certified regulatory program." These are: (1) the preparation and adoption of a Resource Management Plan for the Sacramento-San Joaquin Delta; and (2) the Commission's review and action on general plan amendments proposed by local governments to make their plans consistent with that Commission's Resource Management Plan. (14 Cal Code Regs. § 15251 (n).) This certified regulatory program does not specifically include the adoption of regulations such as the one proposed. The exemption from certain strictures of CEQA has been interpreted very narrowly by the courts to include only those actions specifically authorized by statute. (*Citizens for Non-Toxic Pest Control v. California Dept. of Food and Agriculture*, 187 Cal.App.3d 1575, 1588-1589 (1986).)

By the Commission's own admission, two separate actions are proposed with regard to the proposed regulation. The first is the adoption of a regulation. The second, distinct action is an amendment to the Resource Management Plan. (Staff Report at p.2.) While arguably the Commission's amendment to the Resource Management Plan is subject to the Resources Agency certification, the preliminary adoption of the regulation is not. Since the adoption of regulations are "projects" under CEQA, they must be preceded by appropriate environmental review. (Pub. Res. Code § 21065.) In the case of the proposed regulation, we believe that an EIR is required due to the nature of the individual and cumulative environmental impacts that will result if the regulation is adopted, as well as the significant public controversy surrounding the issue.

2. Even If The Proposed Regulation Is Within The Commissions Certified Regulatory Program, The Environmental Analysis Provided In The Staff Report Is Legally Deficient

Assuming *arguendo* that adoption of the proposed regulation is within the Commission's certified regulatory program, the Environmental Analysis provided in the Staff Report does not comply with the Commission's own program, nor with the requirements of CEQA. CEQA requires that environmental review performed under a certified regulatory program comply with the precise dictates of the specific program. The Commission's certified regulatory program requires compliance with six separate elements: (1) analysis of potentially significant adverse environmental impacts; (2) analysis of feasible

alternatives; (3) analysis of feasible mitigation measures to address such impacts; (4) analysis of short- and long-term effects of the action; (5) analysis of growth-inducing impacts: and (6) analysis of potential cumulative impacts. (14 Cal. Code Regs § 20015.)

a. Potentially Significant Adverse Impacts

The Environmental Analysis ("EA") concludes simply that "there will be significant adverse environmental impacts from the proposed action." (Staff Report at p. 1.) Yet the EA fails to address the potential impacts of the proposed regulation on local agencies who must divert biosolids from landfills. Included in these potential impacts are those related to transportation, risk of upset, and dwindling local landfill capacities. Additionally, the EA fails to address a very significant impact related to increased use of chemical fertilizers and pesticides in the Delta Primary Zone if the regulation is adopted.

According to the EA, the proposed regulation is needed to keep allegedly harmful pollutants derived from biosolids from coming into contact with drinking water supplies and wildlife habitat. By this same analysis, chemical fertilizers -- applied at increasingly higher rates -- would result in significant environmental consequences to the very resources the regulation is purportedly intended to protect. No analysis has been done on these possible impacts.

b. Feasible Alternatives

The EA suggests two possible alternatives to the proposed regulation including a "no action" alternative and adopting a regulation that limits land application to certain, elevated areas of the Delta Primary Zone.

At the outset, it is clear that considering only two alternatives to the proposed action is inadequate under CEQA. (*San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino*, 155 Cal.App.3d 738, 750-751 (1984). Moreover, the rationale for the "elevated alternative" fails to address real environmental concerns related to harm to the resources. First, the proposed regulation creates an exemption from the land ban for two local entities located in the Delta Primary Zone. There is no analysis provided in the EA as to why these local entities' sewage effluent and sludge does not pose the same environmental risks to the Delta that "other" biosolids allegedly pose. Moreover, there is no recognition of the EPA's conclusion that land application of biosolids is safe in virtually any environment, if certain procedures are followed.

We respectfully request the Commission to seriously consider the alternative regulation provided with these comments as set forth in Exhibit E. Bio Gro submits that this alternative is adequate to protect the Delta environment and address the legitimate concerns of the Commission. If the Commission refuses to consider the submitted alternative - or rejects it outright - Bio Gro demands that the Commission provide sufficient justification for doing so.

c. Feasible Mitigation Measures

By its terms, the EA does not propose any mitigation measures, on the grounds that "there are no discernable adverse environmental impacts associated with the adoption of the regulation." (Staff Report at p. 14.) Since Bio Gro has provided substantial information that the proposed regulation will have adverse impacts, the Commission is obligated to re-assess these conclusions.

d. Short - And Long-Term Impacts

The EA provides cursory conclusions that the proposed regulation will have negligible short - or long-term impacts because the regulation "will result in no change to current land management practices and no change to the environment." (Staff Report at p.14.) These conclusions are not supported by the record and are based on incorrect facts.

First, it is false to state that the regulation will result in no change to current agricultural practices in the Delta. As a matter of fact, there are a number of active land application sites within the Delta Primary Zone. Under the terms of the proposed regulation, these sites will be closed down and the use of harmful chemical fertilizers and pesticides would be required.

Second, it is not enough to say that no change in land management practices for the majority of the Delta means "no environmental impact." The Commission must consider ancillary and cumulative impacts of its proposed action, even to jurisdictions outside its statutory authority. (*City of Antioch v. City Council*, 187 Cal. App. 3d 1325, 1334 (1986); *Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d, 721-724 (1990).*)

e. Cumulative Impacts

The EA concludes that "[a]nalysis of possible cumulative impacts indicates there would be none. current land management practices would be continued." (Staff Report at p.15.) This is insufficient under CEQA, and fails to address many, identifiable cumulative impacts.

To state that the possibility of potential traffic, air quality, water quality and other impacts that will occur if the proposed regulation is adopted are "to speculative" to evaluate is an abrogation of the Commission's obligation under CEQA and its own certified regulatory program. The Commission has provided no evidence that it has even considered these cumulative impacts, let alone adequately addressed them. Moreover, that these impacts may occur outside the Delta is irrelevant. The Commission must analyze these impacts as well. (*City of Antioch v. City Council*, 187 Cal. App. 3d 1325,

1334 (1986); *Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d, 721-724 (1990).*)

Finally, it is clear that the proposed regulation will lead to increased use of chemical fertilizers or animal manure as a means of agricultural fertilization. The EA provides no analysis of the potential cumulative impacts associated with the transportation and use of these materials on the drinking water and wildlife resources of the Delta.

In sum, the Commission's half-hearted attempt to analyze the environmental impacts of the proposed regulation is deficient under the Commission's own certified program (assuming *arguendo* it applies to the adoption of this regulation) as well as under CEQA. Bio Gro, under separate cover, will submit information concerning the beneficial environmental impacts associated with biosolids land application.

E. Conclusion

Bio Gro appreciates the opportunity to comment on the Commission's proposed regulation. Bio Gro supports the reasonable and legitimate local regulation of biosolids land applications, and is committed to working with the Commission and other interested parties to develop appropriate regulations for the safe land application of biosolids. However, the proposed regulation being considered by the Commission is neither reasonable nor appropriate, and is illegal under the Delta Protection Act, the U.S. Constitution, the California Administrative Procedures Act and the California Environmental Quality Act. We urge the Commission to reject the proposed regulation.

Very truly yours,

Craig S.J. Johns

CSJJ:kh
Enclosures

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BIO GRO'S SUGGESTED ALTERNATIVE TO PROPOSED REGULATION OF NEW SEWAGE TREATMENT FACILITIES AND AREAS FOR DISPOSAL OF SEWAGE EFFLUENT AND SEWAGE SLUDGE

Title 14, California Code of Regulations, Chapter 3

Section 20030. New sewage treatment facilities(including storage treatment ponds) and areas for disposal of sewage effluent and sewage sludge shall not be located within the Delta Primary Zone. However, this section shall not prohibit the properly regulated beneficial re-use of biosolids (treated sewage sludge) as a fertilizing material. Biosolids may be applied to land within the Delta Primary Zone under the following conditions:

(a) Biosolids shall comply with all requirements set forth in 40 CFR Part 503 regarding beneficial re-use, and shall also comply with the labelling reauirements of the California Department of Food and Agriculture for fertilizer material.

(b) Biosolids may only be applied to lands within the Delta Primary Zone upon the issuance of and in accordance with permits issued by the California Regional Water Quality Control Board and/or by the appropriate local government agency with jurisdiction over beneficial re-use projects.

(c) Permits issued for the application of biosolids within the Delta Primary Zone shall take into consideration the unique aspects of the Delta, and shall include provisions to protect public health, groundwater and surface water. Specific concerns of the Delta which shall be considered include, but are not limited to, high salinity levels, high water table, and the presence of highly organic soils.

EXHIBIT E